THE UNIVERSITY OF ALBERTA

THE EFFECT OF VESTED INTEREST AGREEMENTS ON LAND USE PROCEDURES

by

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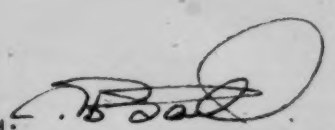
Signed: 

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The undersigned certify that they have read, and recommend to the Faculty of Graduate Studies and Research for acceptance, a thesis entitled THE EFFECT OF VESTED INTEREST AGREEMENTS ON LAND USE PROCEDURES submitted by Charles Brian Samuell in partial fulfilment of the requirements for the degree of Master of Business Administration.

Supervisor

Date: April 20, 1982

ABSTRACT

This is a case study of a land development company which entered into a voluntary development agreement with the land-use regulator. The agreement conferred both monetary and land benefits to the regulator in exchange for a speeded-up and simplified land-use regulation process.

The study examines the regulation factors which affect the costs to a developer and examines how these were affected by the actual modifications to the regulation process.

The major findings of the research are:

1) Land-use regulators will shorten the regulation process for lands which provide the highest public benefit from their development.

2) Land-use regulators will tend to shorten the regulation process to promote competition amongst developers.

3) Land-use regulators will seek increased concessions from developers in exchange for a shorter regulation process.

4) The wishes of the land-use regulator can over-ride those of the developers and further, the public wishes can influence those of the regulator.

5) Public sector input to the land use need not delay the regulation process.

6) Land-use regulators will tend to shorten or lengthen the regulation process in response to negotiations with developers.

7) Dramatic concessions by developers to land-use regulators appear to provide favorable regulation modifications only in the short-run.

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TABLE OF CONTENTS

CHAPTER		Page
1.	INTRODUCTION	1
	1.1 Importance of the Study	1
	1.2 Objectives of the Study	2
	1.3 Research Design	3
2.	REVIEW OF THE LITERATURE	5
	2.1 Introduction	5
	2.2 Price Escalation in the Development Industry	6
	2.2.1 Monopolistic Concentrations of Land Ownership	6
	2.2.2 Extraordinary Demand	7
	2.2.3 Excessive Government Regulation	11
	2.2.4 Price Determination	18
	2.3 Summary	18
3.	THE PLANNING PROCESS IN ALBERTA	20
	3.1 Introduction	20
	3.2 History of Land Use Planning in Alberta	21
	3.3 The Planning Act, 1977	25
	3.3.1 Major Themes of the Act	26
	3.3.2 The Planning Process in Alberta - Its Major Components	27
	3.3.3 Other Major Components of The Planning Act, 1977	46
	3.4 Summary	49

CHAPTER Page

4. THE HISTORY OF THE GROVECO PROJECT 51

4.1 Introduction 51

4.2 The Town of Spruce Grove, Alberta 51

4.3 The History of the Groveco Project 56

4.4 Summary 71

5. THE REGULATION PROCESS IN SPRUCE GROVE 73

5.1 Introduction 73

5.2 The Regulation Process in Spruce Grove 74

5.2.1 The Annexation Process 74

5.2.2 The Phase I Plan of Subdivision 75

5.2.3 The Resubdivisions of Phase I 79

5.2.4 The Area Structure Plan 87

5.2.5 The Phase II Plan of Subdivision 90

5.3 Summary and Conclusions 92

6. IMPLICATIONS FOR LAND USE REGULATION IN ALBERTA 97

BIBLIOGRAPHY 99

LIST OF FIGURES

FIGURE		Page
1.	Actual and Projected Growth of 25-34 Age Group 1960 - 2000	10
2.	The Process of Asset Revaluation	12
3.	The Planning Hierarchy	29
4.	Steps in the Establishment of a Regional Plan	30
5.	Steps in the Establishment of a General Municipal Plan	35
6.	Subdivision Application Process	42
7.	The Edmonton Metropolitan Area	53
8.	The Annexation Process	76
9.	The Phase I Plan of Subdivision	80
10.	Phase I Subdivision Application Process	81
11.	The Somerset Subdivision	83
12.	The Nu-West Subdivision	85
13.	The Groveco Subdivision	88
14.	The Area Structure Plan Zoning Process	91

CHAPTER 1

INTRODUCTION

1.1 Importance of the Study

Land developers and local governments alike seem to have become locked into an increasingly regulated process which controls the use of land for housing. This process has developed into an adversary system which can slow the approval and construction process and increase the cost of housing.

This is a case study of a unique joint-venture land development project in Spruce Grove, Alberta. The project resulted from an agreement entered into in 1977 between the Town of Spruce Grove and a land development company called Groveco Developments Limited.

A typical land development project in Alberta goes through a standardized regulatory process. The Groveco Project involved planning and engineering studies, the Local Authorities Board, numerous Provincial Government Departments, School Boards, the Edmonton Regional Planning Commission and the Town of Spruce Grove. The series of steps necessary to gain approvals for proposed land uses were numerous and complicated. The Town of Spruce Grove, for the most part, had the ability to influence the process by speeding it up or slowing it down.

The developer in this case chose to enter into an agreement which was clearly in the best interests of the Town. The Town agreed to support the annexation of some 560 acres of land and to allow the rapid

development of the land into housing lots. The developer agreed to give the Town anything it would normally obtain from another developer under The Planning Act, plus sixty acres of land for a park and twenty-five percent of the profits from the development of the lands. This gave the Town a vested interest such that it was put in a no-loss situation which could be substantially improved via the profit-sharing arrangement - the more profitable the Groveco Project was, the more profits the Town would make.

The underlying theme of the agreement was one of co-operation and common interests; the anticipated result of the agreement was that the development of the lands would proceed quickly, reducing costs to the developer thereby enabling him to provide greater amenities to the Town via the sixty acres and the profit-sharing. Since the Town's vested interests would best be served by profit maximization on the part of the developer no unnecessary delays in the regulatory process were anticipated.

This study is the first done on the project. In the nearly five years since its inception, the project has progressed to the point where some initial analysis can be done to determine the outcome of the agreement and its effect on the system of regulation.

1.2 Objectives of the Study

The objective of this study is to determine the effect the agreement between the Town of Spruce Grove and Groveco Developments Limited had on the regulation process, whether or not these effects (if any) were beneficial, and if they were, to which parties.

Although the agreement was between the Town and the developer; third parties, such as home builders, home buyers, and existing residents of the Town could be affected. These third party effects could be either intangible, such as enjoyment of park space, or measurable, such as lower-priced housing. This study however does not examine the effects on third parties.

Nor does this study measure the economic impact of such an agreement. Due to the nature of the agreement, the length of time required for proper economic measurements and a dispute over the meaning of the agreement itself, the owners of the company chose not to release the financial information at this time.

Since this agreement was proposed by the developer and was entered into freely, and since there is no provincial or municipal legislation which could impose such an agreement upon other developers, and since no other developers and municipalities have entered into such agreements, this study can provide a unique look at the land-use regulation system in Alberta. Complete analysis of this project, only possible in the future, could indicate the advisability of other such agreements between land developers and municipalities.

It is emphasized that this study is not one of the economic impact of such an agreement. It attempts to interpret the regulation process, how it works, and how it can be modified to the benefit of all.

1.3 Research Design

This study comprises six chapters, the first one being the introductory chapter which outlines the importance of the study, the objectives of the study and the research design.

The second chapter examines the reasons for land use regulations, some theories which explain the various processes which are followed in the application of the regulations and those which have an effect on prices and/or timing of development in the land development industry which can be modified by modifying the regulation process.

Chapter three examines the planning process in Alberta. Discussion of the concepts contained in The Planning Act which can modify the regulation process are undertaken. Area Structure Plan, Plan of Subdivision, reserves and levy requirements are discussed in relation to the applicable legislation and Municipal statutes.

The content and history of the Groveco Agreement with the Town of Spruce Grove is given in Chapter four. Evidence of modification of the regulation process is presented and discussed.

In Chapter five the regulatory process the Groveco Project encountered is examined for variations from the usual process. The reasons for this variation are given in light of the Groveco Agreement and conclusions are drawn about them.

The last chapter discusses the implications of this study on the land use regulation system and makes recommendations for further study.

CHAPTER 2

REVIEW OF THE LITERATURE

2.1 Introduction

Numerous studies have demonstrated the diversity of the regulatory procedures throughout Canada. Even so, the real impact of the regulations continues to be studied and analyzed. In a preliminary report to First Ministers in November, 1978, it was noted:

> There has developed in Canada a strong concern that increasing government regulation might be having serious adverse effects on the efficiency of Canadian firms and industries and on the allocation of resources and distribution of income.[1]

Analysis of the regulation of land use has been undertaken in many forms within the last decade. Of particular interest has been the study of the types of regulation and their impact on housing costs in Canada.

The nature and effects of land use regulations have been discussed in many forms. Most, however, seem to conclude that regulation of land use is in the public's best interests. Land use can be controlled by: regulations which dictate the location of developments, regulations which dictate the type of growth, regulations which dictate the kind of land use, regulations which control and dictate social goals such as low-cost

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1. Ostry, Dr. Sylvia, Regulation Reference: A Preliminary Report to First Ministers, (Economic Council of Canada: Document 800-9/004), November, 1978, p. 2.

public housing, and regulations which control the timing of the development of the land.

In this chapter, the theories which have been advanced to explain the rapid price escalations in the land and housing development industry are examined. The high demand for housing and the various types of government regulations which have contributed to the price escalations are investigated. The summary details the nature of these regulations and discusses their relevance to this case study.

2.2 Price Escalation in the Development Industry

Several alternate theories have arisen to explain the price escalations of the 1970's in the housing and development industry. Generally speaking, they can be divided into three categories:

(a) monopolistic concentrations of land ownership

(b) extraordinary demand

(c) excessive government regulation

2.2.1 Monopolistic Concentrations of Land Ownership. One of the first theories advanced to explain rapidly rising land prices was the concentration of land ownership by development companies resulting in monopoly pricing. This monopoly-speculation theory was advanced by Spurr[2] (1974 and 1976) who claimed to have documented a high degree of ownership concentration in the Toronto area.

Markusen and Scheffman produced a study which countered Spurr and showed that the monopoly power theory was incorrect and that in the long

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2. Spurr, P., The Land Problem's Problem, (Ottawa: Central Mortgage and Housing Corporation), 1974 and Land and Urban Development, (Toronto: James Lorimer and Co.), 1976, pp. 393-402.

run speculators could not cause prices to deviate from competitive levels. By presenting original data on ownership and land assembly they concluded that unforeseen increases in demand, shortages of trunk servicing capacity, and subdivision permit practices were the main causes of price appreciation in the land and housing markets.[3]

2.2.2 Extraordinary Demand. The second explanation for the price escalations in the development industry has been the escalation due to 'extraordinary demand'. To put this 'demand' into perspective a brief discussion of the housing situation in North America may be helpful.

The nineteen seventies can be looked upon as the middle of the greatest period of demand for housing in modern times. This demand was expressed collectively by the natural phenomenon known as the Post-World War II "baby boom".

This group included an extraordinarily large number of children born in the late 1940's and early 1950's. As they have grown up, they have caused changes in all sectors of the economy. Two examples of these changes are the influence on the number of schools required and the demand for public and private transportation. Many of these children are now getting married, and have begun to have children of their own. This means that the "baby boom" children are either in or have recently entered the market for housing. Like their parents, the goal for many is the single-family detached home.

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3. Markusen, J.R. and Scheffman, D.T. Speculation and Monopoly in Urban Development: Analytical Foundations with Evidence for Toronto, (Toronto: University of Toronto Press for the Ontario Economic Council), 1977, p. 131.

If we consider the 25 to 34 age group we can see that these home buyers account for nearly sixty percent of the new homes produced in Canada.[4] In a profile on new home buyers undertaken for the National Association of Home Builders in the United States, it was confirmed that fifty-six percent of the homes bought in the United States in 1975-76 were purchased by people in the 25-34 year old category.[5] And a study prepared for the U.S. National Association of Realtors, based on 1973 data, found that the characteristics of buyers of new homes did not differ significantly in most cases from those who purchased existing homes.[6]

Thus, the year-to-year changes in the size of the 25 to 34 age group provides a good indication of the relative demand for housing in Canada.

From 1960 to 1965 the size of this group declined in Canada from approximately 2,500,000 people to 2,400,000. From 1965 to 1970 the size of the group grew to about 2,750,000, by 1975 to approximately 3,500,000, and by 1980 to approximately 4,100,000. It appears that the rate of growth of this key age group is declining, but the population peak is not expected until the early 1990's when approximately 5,000,000 people are expected to be in the key home buying age group of 25-34.

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4. Central Mortgage and Housing Corporation, Ottawa, Canadian Housing Statistics, for 1976 and 1977, cited by Genstar Homes, Observations on Housing and Land Development, 1978, (Edmonton: Genstar Homes), 1978, pp. 3-4.

5. Sumichrast, M. et al., Profile of a New Home Buyer, (Washington, D.C.: National Association of Home Builders), 1976, p. 43.

6. National Association of Realtors, Washington, D.C., Existing Home Sales, 1976, p. 15.

Figure 1 following illustrates this trend. The pattern illustrates two very important points: one, that the increased demand is likely a result of increasing population in the key home-buying age group, and secondly, that this group and hence its effective demand will continue until the early 1990's when it will begin to decline.

It should be noted that these patterns are not consistent throughout Canada and often depend on growth factors peculiar to specific areas such as cultural patterns, immigration, work opportunities and the rural-to-urban migration.

The ability to purchase a home was made easier through changes in mortgage financing. Mortgages became easier to obtain because of changes in federal laws which allowed high-ratio mortgage loans to be made by the private sector. The combination of increased availability of mortgage money and low down payments made homes affordable to a greater percentage of the population than ever before.

In the 1972 tax reforms a capital gains tax was introduced with an exemption on owner-occupied housing. The effect of this measure was to raise the after-tax rate of return on one's home to a rate higher than other investments. Thus a new Canadian investment strategy arose: buy a house in a rising market, live in it, sell it at a tax-free capital gain and apply the equity and capital gains to a down payment on a new house or other tax-free personal asset.

Some of the other major contributors to increasing demand were increases in the rate of inflation, the fall of the stock market, the growth of real incomes, and the increasing number of working spouses. To

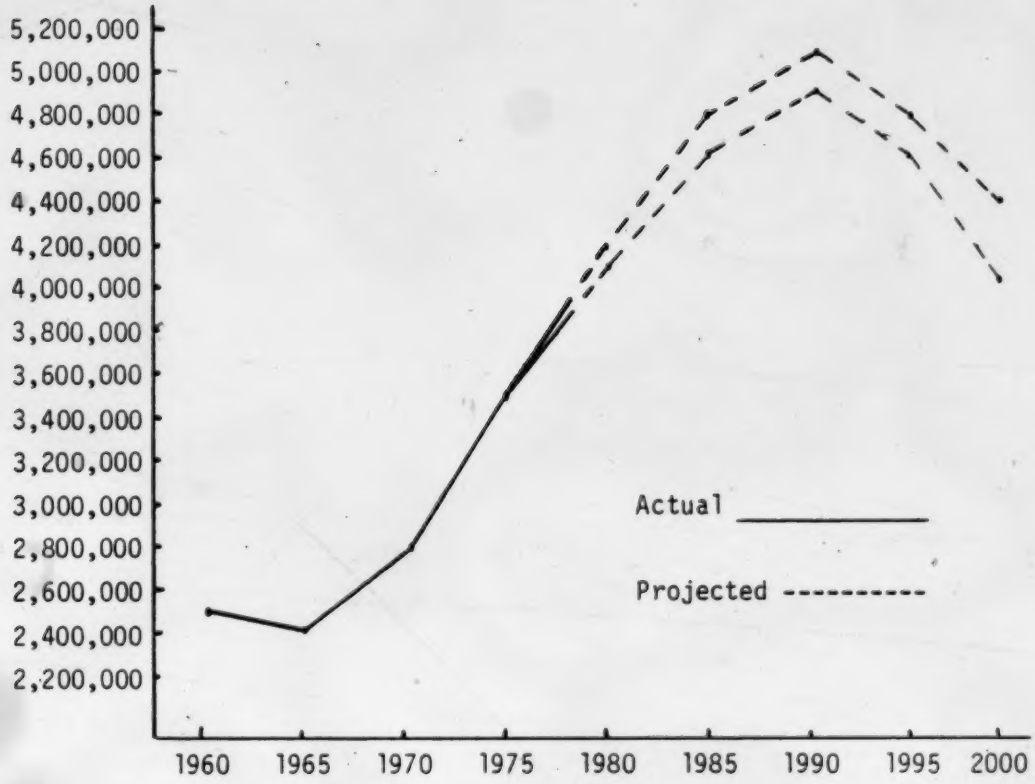

Figure 1

Actual and Projected Growth of the 25-34 Age Group
1960 - 2000

Source: Statistics Canada cited by Genstar Homes, Observations on Housing and Land Development, 1978, (Edmonton: Genstar Homes), 1978, p. 4.

quote from the "Federal-Provincial Task Force on the Supply and Price of Serviced Residential Land":

> Real returns on federal government bonds and on corporate bonds began to fall with rising inflation in the early 1970's and eventually became negative in 1974 and 1975. With the exception of 1972, common shares also performed poorly. At the same time that assets that might serve as alternatives to land and housing were falling in yields, real mortgage rates were also falling. Since these rates essentially affect the cost of buying land and housing, this means that the returns to land and housing were rising. Thus both the fall in returns to financial assets and the increase in the returns to land and housing provided a powerful stimulus to switch asset portfolios from financed assets to land and housing.[7]

The process of asset revaluation is illustrated in Figure 2. As all the demand factors combined, prices rose. These initial increases combined with accelerating inflation to change expectations about future land and housing prices. Since present prices are partly determined by these expectations, present prices were revalued sharply upwards. All of the evidence points overwhelmingly to demand factors and changing expectations as the primary forces behind the land and housing boom.[8]

2.2.3 Excessive Government Regulation. The third theory which is used to explain the price escalation in the development industry is that of excessive government regulation. As a result of the increased housing demand, municipalities faced great pressure to grow, to preserve the status quo, to maintain the quality of life, and to minimize any adverse cost effects of growth.

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7. Federal-Provincial Task Force on the Supply and Price of Serviced Residential Land, Down to Earth: Report on the Federal-Provincial Task Force on the Supply and Price of Serviced Residential Land, Toronto, 1978, Volume Two, p. 44.

8. Ibid., Volume One, p. 21.

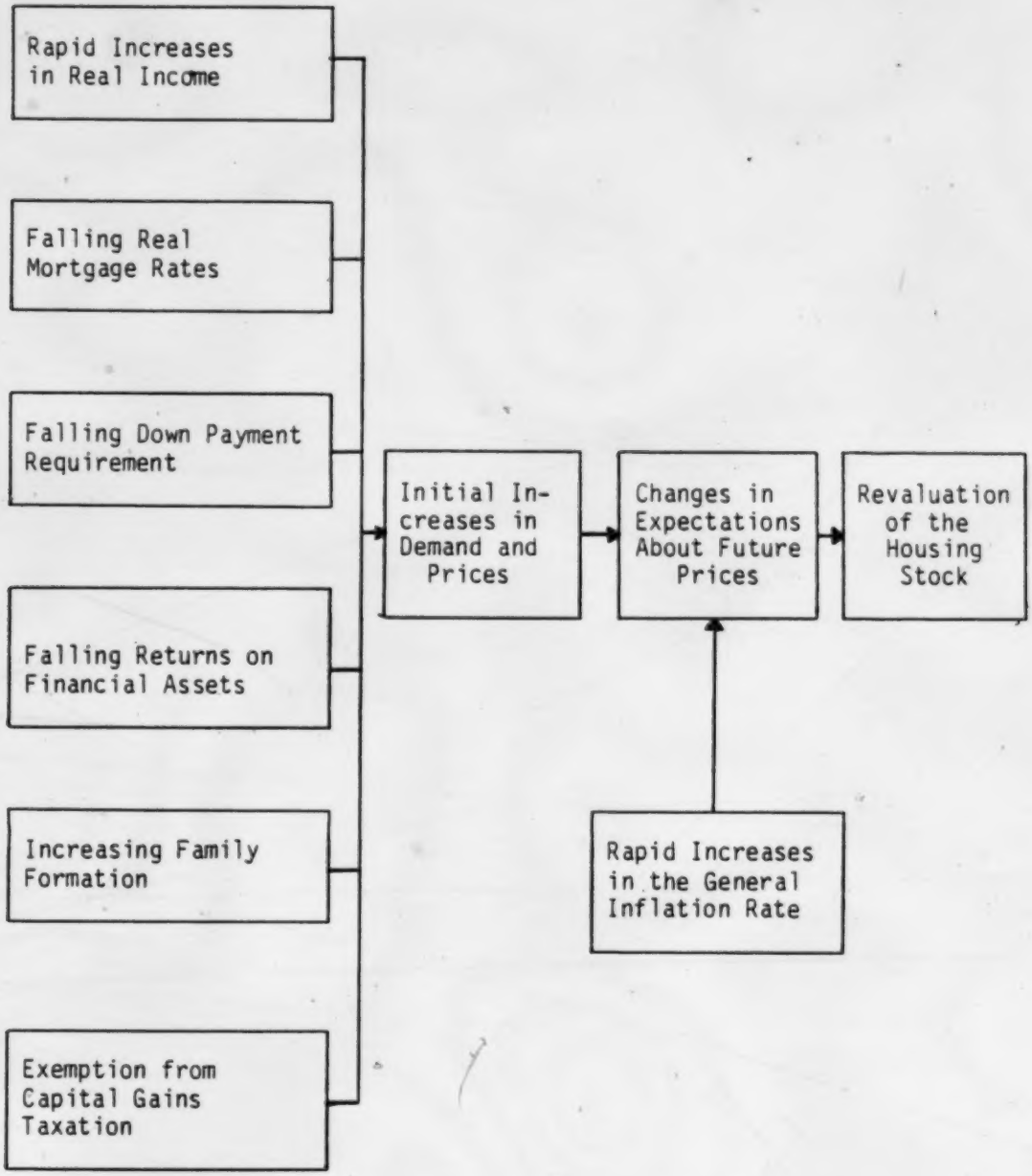
Rapid Increases in Real Income
Falling Real Mortgage Rates
Falling Down Payment Requirement
Falling Returns on Financial Assets
Increasing Family Formation
Exemption from Capital Gains Taxation
Initial Increases in Demand and Prices
Changes in Expectations About Future Prices
Revaluation of the Housing Stock
Rapid Increases in the General Inflation Rate

Figure 2

The Process of Asset Revaluation

Source: Federal-Provincial Task Force on the Supply and Price of Serviced Residential Land (1978), Figure 2.M, Volume One, p. 30.

The "Public Interest" theory of regulation put forward by Posner holds that "regulation is supplied in response to the demand of the public for the correction of inefficient or inequitable market practices."[9] Supporters of this "public interest" theory argue that unregulated development by the private sector would lead to high public costs and environmental damage. They maintain that unregulated development would lead to pollution via untreated sewage, inadequate transportation systems, crowded and inferior school systems, leapfrog development patterns, undersized municipal services, and various other harmful effects which would have cost implications to the public sector which are not covered by existing tax revenues.

As a result of the costs of growth, the land-use regulation function has evolved various methods to minimize or eliminate the public costs of growth via fiscal and public goods zoning.

Fiscal zoning has been defined as the method whereby the public sector assesses levies, fees, or developer contributions on the new homeowners directly or indirectly.[10] Common examples of fiscal zoning are the payments by land developers to municipalities, which are then utilized by the municipalities for roads, sewers or recreation.

Public goods zoning has been defined as the method whereby the public sector controls the characteristics of the new homeowners by

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9. Posner, R.A., "Theories of Economic Regulation," The Bell Journal of Economics and Management Science, (Autumn, 1974), p. 335.

10. Dale-Johnson, David, Greater Vancouver Regional District Land Use Regulation Study: An Evaluation of the Land Use Approval Process in Coquitlam, Surrey and Vancouver, 1979. (Ottawa: Regulation Reference, Economic Council of Canada), 1980, p. 27.

creating housing standards which are restrictive in nature and consequently only allow new households of certain economic status to enter the municipality.[11] An example of public goods zoning occurs when a municipality requires a large home on a large lot and only allows the development of large lots.

Both fiscal and public goods zoning tend to restrict the supply to some degree and also help ensure an acceptable and affordable level of public services.

In 1975 Derkowski analyzed the increase in development costs and identified the key problem as the chronic scarcity of building lots created by artificial restrictions. This scarcity results in two distinct problems: (1) it drives up the prices of lots, and (2) the higher priced lots tend to be used for higher priced homes.

The main causes for the scarcity were:

(a) excessive restrictions on development (including public participation) and,

(b) servicing standards and municipal levies.[12]

The Greenspan Federal-Provincial Task Force on the Supply and Price of Serviced Residential Land found the relationship of supply on housing prices in Finding 4:

> During the boom, lot prices in some places in some years rose 30 percent to 40 percent. Neither developers nor municipalities, neither ratepayers nor planners, could sufficiently strangle supply

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11. Ibid., p. 27.

12. Housing and Urban Development Association of Canada, Costs in the Land Development Process, (Toronto, Ontario: Hudac), 1975, pp. 3-4.

> for the short years of the boom to explain either price rises of that magnitude or their occurance across much of the country. The reason is that they can restrict only new housing, not existing housing. Yet in most growing urban areas about 95 percent of the housing stock is fixed in the short run while the annual production of the new housing units is only about 5 percent of the existing stock. Because the existing stock dominates the market in the short run, new housing production does not substantially affect the total housing market over short periods of time. The 5 percent tail cannot wag the 95 percent dog in the short run.[13]

The involvement of the affected agencies and participants in the regulatory process and their effect on the supply side of complex development projects are examined next.

The cost implications, in addition to those felt by the public sector, are felt in many similar and different ways by the development industry and the homebuyer. S.R. Seidel classifies three types of regulations with cost implications as:

(a) direct costs - those costs which can be attributed to compliance with regulations such as planning and legal fees, on-site and off-site levies, and developer contributions,

(b) delay and uncertainty costs - those costs which can be attributed to the delays and inefficiencies in the administration policy,

(c) unnecessary and/or excessive requirement costs - those increased costs which can be attributed to servicing standards, land dedications, zoning standards and growth controls.[14]

His relevant conclusions are:

(a) the subdivision approval process has increased in complexity.

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13. Federal-Provincial Task Force on Supply and Price of Serviced Residential Land, Down to Earth: Report on the Federal-Provincial Task Force on the Supply and Price of Serviced Residential Land, Toronto, 1978, Volume One, pp. 19-20.

14. Seidel, S.R., Housing Costs and Government Regulation, (New Brunswick, N.J.: Centre of Urban Policy Research), 1978, pp. 42-45.

Negotiated agreements regarding subdivision requirements have been used to extort excess improvements from developers;

(b) zoning regulations are frequently used to severely restrict the construction of moderately-priced housing. Zoning variances are frequently being used as bargaining devices aimed at increasing control by local officials over the character of new development. Zoning ordinances are frequently administered by elected officials more attuned to political than planning objectives; and

(c) growth control ordinances, by limiting the amount of developable land, drive up the price of those lots on which construction is permitted. The cost impact of growth controls is felt more by the surrounding communities than by the municipality adopting the control measure.[15]

As detailed in Chapter 5, all of these conclusions were factors in the Groveco Project.

The Greenspan Report places some of the blame for rising prices on regulation. The conclusions relevant to regulations are:

(a) the sharp housing price increases that occurred across Canada from 1972 onwards caused, in most areas, even larger proportionate increases in serviced-lot prices. Where officials were willing and able to speed up the rate at which subdivision applications were approved, lot-price increases lagged behind house-price increases. Where the approval process was slow to respond, serviced-lot shortages forced lot prices up more rapidly.

(b) an increasingly common type of supply restriction and hence determinant of long-run lot prices seems to be municipal resistance to new development on the grounds that new development does not pay its way. It is not new development per se that causes the problem but rather the structure of the property tax and political fragmentation which are to blame. Municipal resistance to new development is likely to continue or increase in the absence of changes to the property tax.

(c) A second increasingly common type of supply restriction and determinant of long-run lot prices arises from resistance to development on the part of existing residents in many municipalities. Such opposition is often highly effective since the

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15. Ibid., pp. 308-311.

> potential residents who need housing have little or no political representation. Ironically, citizen resistance is often directed at medium or high density developments, low and medium income housing and infill developments, which are precisely the types of projects that public authorities are currently trying to encourage.[16]

These conclusions will also be seen as factors in the Groveco Project as detailed in Chapter five.

Gruen and Gruen and the Urban Land Institute in 1977 measured the impact of growth management and concluded that:

> Where regulations restrict the supply of developable land and rate of construction in a community where demand is relatively price inelastic, one can expect prices to increase without respect to development cost increase...[17]

Smith, in 1974, provided evidence that the price elasticity for the demand for housing was approximately 0.8 to 1.0.[18]

In a 1978 Task Force, the U.S. Department of Housing and Urban Development (HUD) concluded that:

(a) increased government regulation to all levels is shown both in substantive requirements and in processing delays; and

(b) shortage of serviced building sites, resulting from inadequate public facilities, and land use, environmental, no-growth and exclusionary zoning regulations constrain land supply,

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16. Federal-Provincial Task Force on the Supply and Price of Serviced Residential Land (1978), Down to Earth: Report of the Federal-Provincial Task Force on the Supply and Price of Serviced Residential Land, Toronto, pp. 185-189.

17. Gruen, Gruen and Associates and the Urban Land Institute, The ULI Study-Effects of the Regulation on Housing Costs: Two Case Studies, (Washington, D.C.: Urban Land Institute), 1977, p. 9.

18. Smith, L.B., The Postwar Canadian Housing and Residential Mortgage Markets and the Role of Government, (Toronto: University of Toronto Press), 1974, p. 31.

particularly for low and moderate income housing.[19]

2.2.4 Price Determination. The previous discussion has shown that prices rise in response to government regulation. Some discussion about prices and costs in the short run is now called for.

Goldberg (1977) has shown that the price of land is derived from the price of housing. In the short run with the stock of houses and land fixed, it is the price of housing that determines the price of residential land, therefore the cost of land to developers cannot affect price, it can only be affected by price. In this short-run situation the distinction between price (determined by total demand and total supply-stock) and cost is critical. Price can vary widely from cost.[20]

Nowlan (1977) noted that since the regulation process is not a price-responsive, value-maximizing mechanism which responds to supply and demand, higher prices can result in the short run in response to the rate at which new properties are permitted to be developed.[21]

2.3 Summary

All of these studies tend to support the theory that price escalations in the development industry are due, in part, to the combination of extraordinary demand and excessive government regulations.

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19. U.S. Department of Housing and Urban Development (HUD), Final Report of the Task Force on Housing Costs, (Washington, D.C.: HUD), 1978, cited by David Dale-Johnson, Greater Vancouver Regional District Land Use Regulations Study: An Evaluation of the Land Use Approval Process in Coquitlam, Surrey and Vancouver, 1979, (Ottawa: Regulation Reference, Economic Council of Canada), 1980, p. 43.

20. Goldberg, M.A., "Housing and Land Prices in Canada and the U.S.," Public Property? The Habitat Debate Continued, (Vancouver: The Fraser Institute), 1977, p. 245.

21. Nowlan, D.M., "The Land Market: How it Works," Ibid., p. 24.

The extraordinary demand resulted from rapid increases in real income, falling real mortgage rates, falling down payment requirements, falling returns on financial assets, increasing family formations and exemptions from capital gains taxation. The result was increased prices which combined with accelerated inflation and changes in expectations about future prices to cause a wholesale revaluation of the housing stock upwards.

The second main reason for price escalations was the nature of government regulation of the development industry. Seidel has shown that the subdivision approval process has increased in complexity, has allowed municipalities to extort excess improvement from developers, and has allowed municipalities to control growth via zoning or land-use regulations. Greenspan concluded that lot prices tended to be higher in areas with more regulation, that the supply tended to be restricted due to municipal resistance to new development by municipal officials on the grounds that new developments do not pay their way, and by resistance to development on the part of existing residents. Gruen et al concluded that where the supply was restricted and demand was relatively price inelastic, prices would increase without respect to development cost increases. Derkowski concluded that excessive restrictions drove up lot prices and the higher priced lots tended to be used for higher priced homes. The HUD Task Force confirmed the above conclusions.

Later, in Chapter five, we study in detail the application of land use regulations to the land development project of Groveco Developments Limited in Spruce Grove. The Groveco Project attempted to modify the regulation process in a manner which would be in the best interests of both the developer, the regulator, and third parties such as house builders and home buyers.

CHAPTER 3

THE PLANNING PROCESS IN ALBERTA

3.1 Introduction

Regulation of the planning and development process in Alberta is managed in a variety of ways. This chapter examines the planning process which led to The Planning Act, 1977, and the major components of the planning process and The Planning Act, 1977.

Land use planning in its simplest terms can be defined as a rational process of identifying the goals of a community and developing means by which these can be met, through control over the use to which land is put.[1]

In this chapter the planning process is examined. Firstly the history of land use legislation in Alberta is reviewed. Relevant provisions of the various Acts are extracted to help set the framework for the current day legislation and land use planning structure in Alberta.

The themes, the process, and the components of The Planning Act, 1977 are next examined in some detail. Further discussion of the delegation of authority to the local government level from the federal and provincial governments is presented by Hamilton in the Economic Council of Canada Technical Report No. 13.

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1. Alberta Municipal Affairs, Planning In Alberta: A Guide and Directory, November, 1980, p. 1.

In the final section a summary is provided which sets forth the legislation relevant to the Groveco case study.

3.2 History of Land Use Planning in Alberta

In 1913 the Alberta Government passed The Town Planning Act (Chapter 18 Statutes of Alberta 1913). The Town Planning Act of 1913 introduced planning legislation for the first time in Alberta and provided for the following matters:

(a) the preparation and approval of town planning schemes;

(b) that the control of a town planning scheme preparation and implementation was vested in the Minister. The Act provided that the town planning scheme was to have no effect without ministerial approval;

(c) that town planning commissions could be appointed to control planning schemes;

(d) there was a power to enforce schemes by demolition of existing buildings. Compensation was to be provided for demolition with the right to appeal to independent arbitrators;

(e) the Act provided for "betterment" in those cases where a plan provided a benefit to an owner because of a zoning favourable to him. The town was stated to be entitled to one half of the increased value attributable to the property as a result of the zoning. There were, however, no provisions provided to either calculate or collect it.[2]

In 1922 the Town Planning Act was included in the general revision of the Statutes. No new provisions were added to it at that time.

In 1928 a new Act entitled An Act to Facilitate Town Planning and

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2. Government of the Province of Alberta, Town Planning Act, 1913, c. 18, s. 1-7.

the Preservation of the Natural Beauties of the Province provided for the following matters:

(a) the establishment of a Town and Rural Planning Advisory Board appointed by the Lieutenant Governor in Council and consisting of three members. The Board was to co-operate with local authorities in formulating and carrying out town planning schemes. It was also a part of its duties to assist and advise the local authorities in order that new buildings, amongst other things, shall not "mar the amenities of the locality",

(b) the Board with the approval of the Lieutenant Governor in Council was permitted to make regulations concerning various matters including building lines on highways (i.e. to prohibit buildings within a certain distance from a highway), prohibiting signs and advertisements within a quarter of a mile of a highway outside town, generally for the control of garages and also for the care and acquisition of parks and land for parks.[3]

In 1929, the two former Acts were repealed and consolidated into an Act entitled An Act to Consolidate and Amend the Statutes Relating to Town Planning and the Preservation of Natural Beauty.

Basically the Town and Rural Planning Advisory Board continued with the same functions and regulation-making powers it had in the 1928 Act. Provision was made to permit local authorities, with the approval of the Minister, to appoint Town Planning Commissions of three, six or nine members with powers to raise money and expropriate. They had some other functions including to advise, prepare and carry out planning schemes, and to prepare and administer zoning by-laws. The Act also permitted two or more municipalities, with the consent of the Minister, to appoint a Regional Planning Commission and to delegate to the Commission the power

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3. Government of the Province of Alberta, An Act to Facilitate Town Planning and the Preservation of the Natural Beauties of the Province, 1928, c. 48, s. 3-5.

to carry out planning schemes but the Commission was not authorized to raise money or expropriate land.

Provisions relating to the preparation of various planning schemes were continued under the name of "official town plans". One of the schemes was for the purpose of providing for plans respecting "rapid transit" and airport facilities. The offical town plans still had to have the prior approval to the Minister.

The Act also provided for a council, with the approval of the Minister, to make zoning by-laws including provisions respecting the enactment of zones for permitted and conditional uses, and provisions relating to protection of property under the zone-conforming use system. Anyone who felt aggrieved by a by-law could appeal to the Town Planning Commission, and the Town Planning Commission in coming to a decision had to base its decision on, amongst other things, the following:

> "substantial justice and that the interests of any individual are not unduly or unnecessarily sacrificed for the benefit of the community."[4]

During the depression of the 1930's, urban planning once again lost importance as the Provincial Planning Branch was disbanded due to drastically curtailed provincial revenues. On the other hand, planning on a regional scale was initiated as landowners went bankrupt and homesteads were deserted, thus requiring the government to acquire and administer large tracts of land.[5]

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4. Government of the Province of Alberta, An Act to Consolidate and Amend the Statutes Relating to Town Planning and the Preservation of Natural Beauty, 1929, c. 49, s. 36(3).

5. Alberta Municipal Affairs, Planning In Alberta: A Guide and Directory, November, 1980, p. 1.

In 1942 there was a general revision of the Statutes but no new provisions on planning matters were included at that time. Between 1942 and 1955 there were an increasing number of amendments relating to planning matters and by the time the 1955 general Revision of the Statutes took place the Act had in it the following provisions:

(a) provisions for the establishment of a Provincial Planning Advisory Board appointed by the Lieutenant Governor in Council;

(b) provisions for the appointment of District Planning Commissions established by the Lieutenant Governor in Council (these were the forerunners of Regional Planning Commissions).

(c) provision for the Provincial Planning Director to issue zoning caveats with respect to any city or town that was not under a zoning by-law;

(d) subdivision control was governed by regulations made by the Board with the approval of the Lieutenant Governor in Council;

(e) replot provisions;

(f) interim development control;

(g) general plan provisions;

(h) development schemes and zoning by-laws;

(i) Technical Planning Commissions (fore-runners of Municipal Planning Commissions);

(j) Planning Advisory Committees consisting of representatives from the council, citizens and interested organizations.[6]

As the District Planning Commissions were formed, it became clear that having only an advisory role did not give the Commissions much authority on land use planning decisions. In 1957, some larger Commissions were given the authority to prepare a district general plan

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6. Government of the Province of Alberta, The Town and Rural Planning Act, 1950, c. 71.

governing land use for the entire district. Once such a plan was adopted, no municipality could take actions inconsistent with the plan.

In 1963 the Planning Act was revised and re-written to include the following major provisions:

(a) establishment of the Provincial Planning Board;

(b) establishment of Regional Planning Commissions and the membership of them;

(c) the establishment of an Alberta Planning Fund contributed by both municipalities and the Provincial Government;

d) Municipal Planning Commissions and Development Appeal Boards;

(e) subdivision of land and the subdivision and transfer regulations;

(f) provisions respecting reserves and their disposition upon approval of the Board;

(g) provisions respecting replotting schemes;

(h) public participation in the enactment of by-laws and plans;

(i) development control and zoning;

(j) general plans.[7]

Between 1963 and 1977 there were virtually annual amendments to The Planning Act. It was largely repealed on March 31, 1977, when The Planning Act, 1977 was enacted.

3.3 The Planning Act, 1977

The following discussion includes the major themes, the process of regulation, and the components of The Planning Act, 1977.

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7. Government of the Province of Alberta, The Planning Act, 1963, c. 43.

3.3.1 Major Themes of the Act. An examination of The Planning Act, 1977 reveals five major themes, which identify the main concerns of the provincial government in establishing the Act.

3.3.1.1 System for Orderly Development and Use of Land

The stated purpose of the Act is to establish a system for "the orderly, economical and beneficial development and use of land" which will "maintain and improve the quality of the physical environment".[8]

This theme of orderly development is the basic premise behind the Act.

3.3.1.2 Preservation of Local Autonomy

The second theme running through the Act is the preservation of local autonomy in the land development process. Municipal councils are provided with a large degree of autonomy at the municipal level; and through their membership in Regional Planning Commissions, local input is also provided for at the regional level.

3.3.1.3 Minimization of the Time Required to Bring Land Onto the Market

In an effort to speed up the process of bringing land onto the market, subdivision regulations were simplified and reduced in number, and time limits were set for appeals on decisions.

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8. Government of the Province of Alberta, The Planning Act, 1977, c. 89, S.2.

3.3.1.4 Recognition of Broad Regional and Provincial Concerns

A number of sections in the Act provide for Provincial involvement in the planning process in cases where a development encompasses several local jurisdictions, or where provincial concerns are involved. The Act defines the extent to which the Minister of Municipal Affairs or the Lieutenant Governor in Council may participate in the development process.

3.3.1.5 Public Participation

The fifth theme of The Planning Act, 1977 is the encouragement of public participation. Through the powers of elected officials and the provisions for public hearings and appeals, public input is provided for at a number of stages in the development process.

3.3.2 The Planning Process in Alberta - Its Major Components. In the land development process, a number of different plans are involved which vary in the broadness of their policy applications and the size of the area of land that they regulate. These plans, as laid out in The Planning Act, 1977, can be depicted in terms of a pyramid wherein each plan must conform with the provisions of the plans above it in the pyramid. Those plans higher on the pyramid regulate the development of larger land areas. (Figure 3 - The Planning Hierarchy).

3.3.2.1 Regional Plans

At the top of the planning pyramid is the Regional Plan, to which all other statutory plans and bylaws must conform. This is necessary because the Regional Plan outlines the land use for large regions of the province, encompassing more than one municipal jurisdiction.

The Planning Act, 1977 states very generally the contents of the regional plan:

"46. A regional plan:

(a) shall provide for the present and future land use and development of the planning region, and

(b) may regulate and control the use and development of land in the planning region."[9]

Through interpretation of this section by Regional Planning Commissions, the Regional Plans cover such areas as the Edmonton Regional Planning Commission, the Calgary Regional Planning Commision, as well as six other Regional Commissions intended to act as a driving force, joining together municipalities with common topographical, economic and/or transportation concerns. In areas not contained within the jurisdiction of a Regional Planning Commission, the Minister of Municipal Affairs may prepare and adopt a Regional Plan [Sec. 53.1)

The Act states [Sec. 45(1)] that on or before December 31, 1982, a regional plan must be adopted by each Regional Planning Commission for the planning region under its jurisdiction. The steps to be followed in the preparation of these regional plans is detailed in the Act, as follows: (See Figure 4 for a schematic outline)

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9. Government of the Province of Alberta, The Planning Act, 1977, s. 46.

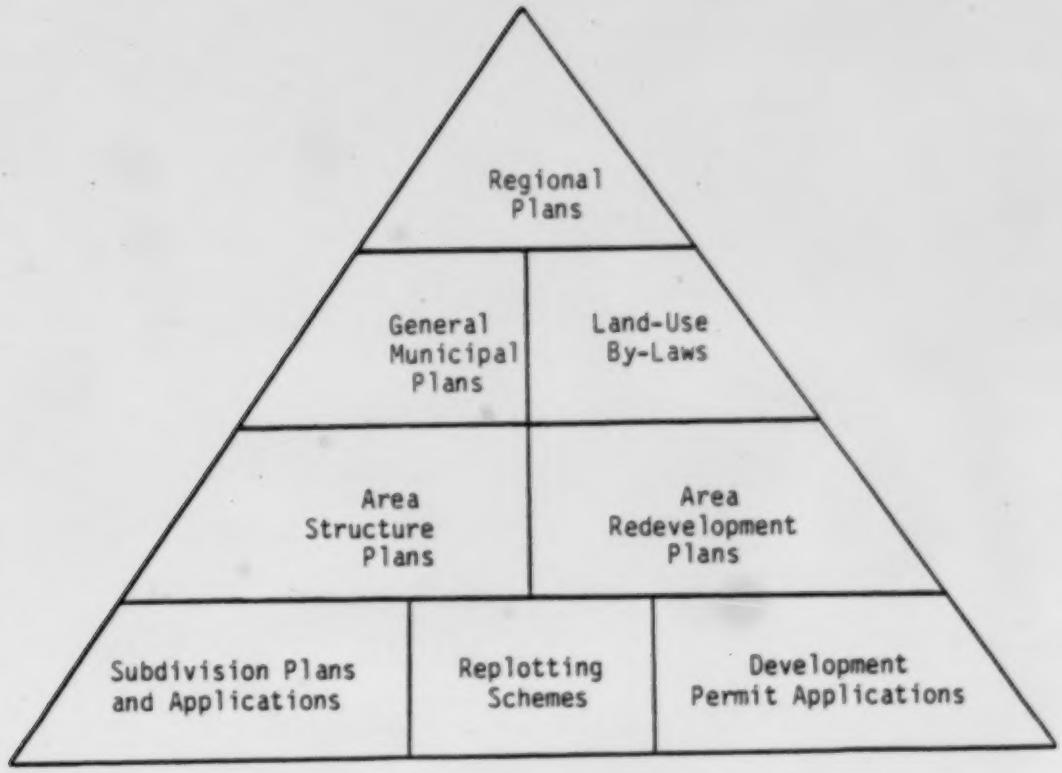

Figure 3

The Planning Hierarchy

Source: Planning in Alberta: A Guide and Directory, November, 1980.[10]

10. This hierarchy has been amended from that shown in the directory by relocating the 'Replotting Schemes' to the bottom level. It is felt that Area Structure Plans and Area Redevelopments Plans are a normal requirement prior to subdivisions, replots or development permits, and should therefore be placed at a higher level.

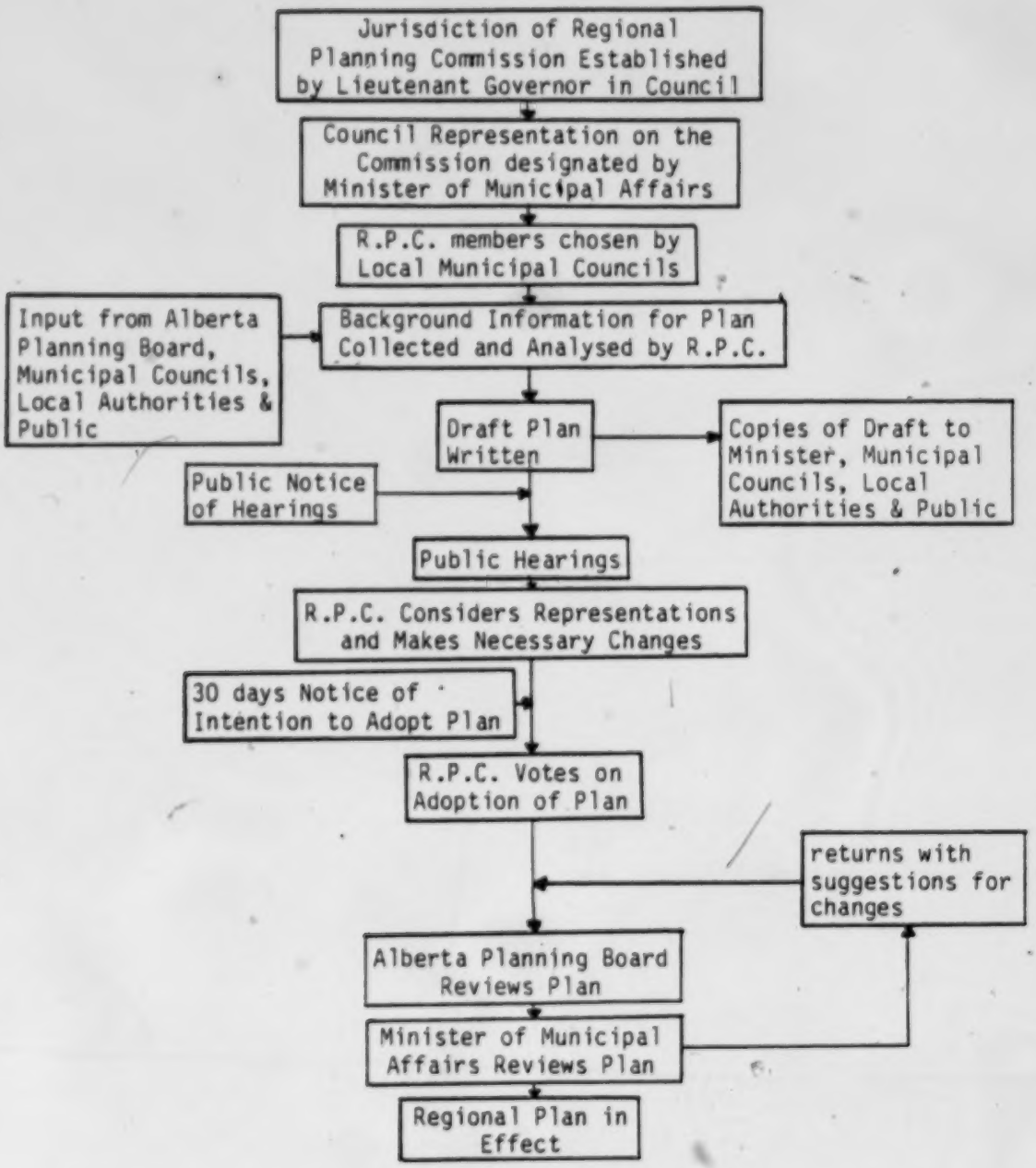
Jurisdiction of Regional Planning Commission Established by Lieutenant Governor in Council
Council Representation on the Commission designated by Minister of Municipal Affairs
R.P.C. members chosen by Local Municipal Councils
Input from Alberta Planning Board, Municipal Councils, Local Authorities & Public
Background Information for Plan Collected and Analysed by R.P.C.
Draft Plan Written
Copies of Draft to Minister, Municipal Councils, Local Authorities & Public
Public Notice of Hearings
Public Hearings
R.P.C. Considers Representations and Makes Necessary Changes
30 days Notice of Intention to Adopt Plan
R.P.C. Votes on Adoption of Plan
returns with suggestions for changes
Alberta Planning Board Reviews Plan
Minister of Municipal Affairs Reviews Plan
Regional Plan in Effect

Figure 4
Steps in the Establishment of a Regional Plan

Source: Planning In Alberta: A Guide and Directory, November, 1980, p. 17[11].

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11. Although this figure is based on Figure 3.2 from the above noted source some changes have been made to clarify the steps in the process.

(a) The first step is the establishment of the Regional Planning Commissions and their jurisdictions by the Lieutenant Governor in Council (Sec. 21). Regions are established on the basis of joining together municipalities with common topographical, economic and/or transportation concerns. In areas not contained within the jurisdiction of a Regional Planning Commission, the Minister of Municipal Affairs may prepare and adopt a Regional Plan (Sec. 53.1). The Minister of Municipal Affairs then designates the local councils that are to appoint members to the various commissions, and the number of members to be appointed [Sec. 22 (1)]. The local councils choose their representatives from amongst their membership [Sec. 22(2)]. Councils which are not represented by membership on the Commission shall have the right to attend certain Commission meetings (Sec. 24).

(b) The Regional Planning Commission, once established, sets about the preparation of the Regional Plan. Employees can be hired and experts consulted in assembling and analyzing information for the Plan [Sec. 26 (2)].

During the initial preparatory stage, the Commission must provide for input from the Alberta Planning Board, the municipal councils within the region, local authorities and the public (Sec. 47).

(c) A draft Plan is then written, and public hearings are held (Sec. 48). On the basis of representations made at the hearings, the Commission makes the necessary changes to the plan [Sec 49(1)].

(d) Thirty days notice of the adoption of the proposed plan is then given to every local authority in the region [Sec. 49(2)]. The Plan may then be adopted with a two-thirds majority vote (Sec 50).

(e) Upon adoption by the Commission, the Plan is sent to the Alberta Planning Board [Sec. 51(1)]. Membership on the board consists of senior civil servants, appointed by the Lieutenant Governor in Council [Sec. 13(2)]. The Board may return the Plan to the Commission with suggestions for changes [Sec 51(2)(a)]; or approve the Plan and send it to the Minister of Municipal Affairs [Sec. 51(2)(b)]. If a Plan is referred back to the Commission, thirty days notice must again be given to allow for local input on changes, and another vote taken [Sec. 52(1)].

(f) The Minister, upon receipt of a Plan approved by the Board, may return it to the Board directing that it be referred back to the Commission with suggestions for changes [Sec. 51(3)(a)]; or ratify the Plan [Sec. 51(3)(b)].

(g) The Regional Plan comes into effect upon ratification by the Minister [Sec. 51(4)].

3.3.2.2 General Municipal Plans

To further aid in the orderly development of land, The Planning Act, 1977, requires that a General Municipal Plan be developed by every urban municipality with a population of 1,000 or more, and every county or municipal district with a population of 10,000 or more [Sec. 59(1)]. The purpose of the General Municipal Plan is to provide greater detail on the broad policies contained in the Regional Plan, so that the Regional Plan can be applied at the municipal level.

The contents of the General Municipal Plan are outlined in Sec. 61 of the Act:

> 61. "A general municipal plan shall -
>
> (a) describe
>
> (i) the land uses proposed for the municipality, and
>
> (ii) the manner of and the proposals for future development in the municipality;
>
> (b) designate or describe the areas of the municipality that would, in the opinion of the council, be suitable for an area structure plan or an area redevelopment plan or both;
>
> (c) contain any other matters that the council considers necessary."[12]

This definition provides the municipality with great flexibility in the items to be covered by their Municipal Plans. The major concern of the Plan is the determination of the physical development of a community: location of different

12. Government of the Province of Alberta, The Planning Act, 1977, s. 61.

types of land use, transportation networks, utility systems, directions and timing of growth. Involved in such determinations are a number of economic, social and environmental issues. Background studies need to be made on how the various land use decisions will affect factors such as economic base, population growth, adequacy of social services, demand for recreational facilities, levels of pollution. The determination of the General Municipal Plan goes a long way in shaping the future composition of the community.

The General Municipal Plan is developed at the municipal level, but must conform with the Regional Plan which has been developed with a higher level of provincial government involvement. The procedures for developing and adopting a General Municipal Plan are as follows: (See Figure 5 for a schematic outline)

(a) Information is gathered by the municipality, using the services of consultants such as planners, engineers, transportation experts and the local planning authorities. An opportunity must be given to the public to provide input during the preparatory stage (Sec. 60).

(b) The draft plan is then introduced as a proposed by-law to adopt it as the General Municipal Plan. The proposed by-law is given first reading.

(c) Before giving second reading to the by-law, a public hearing must be held. Notice of the hearing

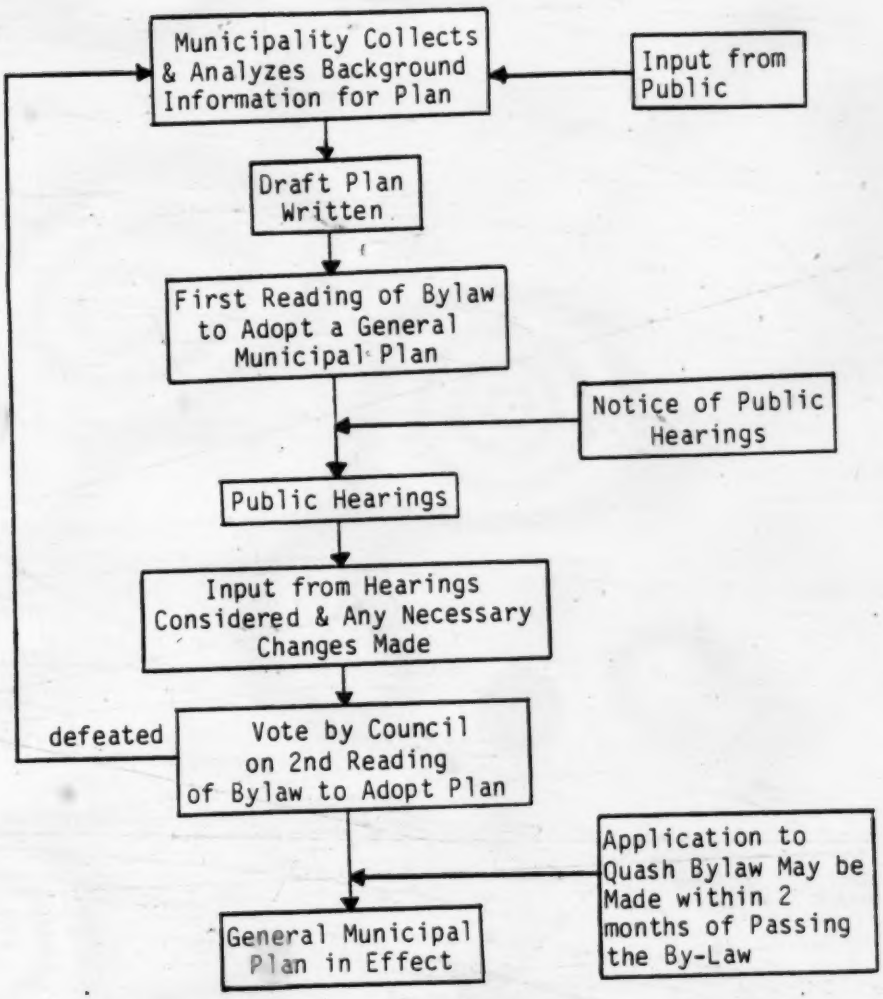
Municipality Collects & Analyzes Background Information for Plan
Input from Public
Draft Plan Written
First Reading of Bylaw to Adopt a General Municipal Plan
Notice of Public Hearings
Public Hearings
Input from Hearings Considered & Any Necessary Changes Made
defeated
Vote by Council on 2nd Reading of Bylaw to Adopt Plan
Application to Quash Bylaw May be Made within 2 months of Passing the By-Law
General Municipal Plan in Effect

Figure 5

Steps in the Establishment of a General Municipal Plan

Source: Planning In Alberta: A Guide and Directory, November, 1980, p.20.[13]

13. Although this figure is based on Figure 3.3 from the above noted source, some changes have been made to clarify the steps in the process.

must be given in the local paper and copies of the proposed plan made available for inspection. Council must also outline the procedure to be followed by persons wishing to appear at the hearing (Sec. 139). In the case of minor amendments, a public hearing need not be held (Sec. 137 and 138).

(d) After considering the input from the public hearings and making any necessary changes to the Plan, a vote is taken by council. If defeated, the plan is rewritten. If passed, the by-law takes effect, notwithstanding any lack of compliance with The Planning Act, 1977 or The Municipal Government Act, unless an application to quash it takes place within two months (Sec. 139).

3.3.2.3 Land Use By-Laws

Once a General Municipal Plan is in place, the next logical step is the preparation of a Land Use By-Law. "A general municipal plan should precede a land use by-law to provide an overview of the policies and principles that will guide land use and development. The land use by-law will follow, filling in the detail of the policy of the plan".[14]

The Land Use By-Law is shown on the same level as the General Municipal Plan in Figure 3 - The Planning Hierarchy.

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14. Elliott, David, "Understanding the Planning Act," Municipal Counsellor, Volume 22, No. 3, 1978, p. 2.

This placement is because it is not required that the Land Use By-Law comply in every detail to the General Municipal Plan. There should not, however, be unresolveable conflicts between the two, since subdivision applications are required to comply with the Land Use By-Law and all of the appropriate plans.[15]

Sec. 66 of The Planning Act, 1977 requires that a Land Use By-Law be prepared by the council of all municipalities with a population of 1,000 or more. The purpose of the Land Use By-Law is to "prohibit or regulate and control the use and development of land and buildings within a municipality" [Sec. 67(1)]. This by-law is the legal tool by which the General Municipal Plan and any Area Structure Plans and Area Redevelopment Plans are carried out.

The by-law divides the entire municipality into districts, and then designates for each district such details as:

- population densities
- minimum and maximum area of lots (subject to subdivision regulations
- permitted uses of land and buildings
- height, size, location of buildings
- maximum lot coverage
- landscaping requirements
- parking area requirements
- design of buildings

15. Ibid., p. 2.

- access to lots
- use of billboards [Sec. 67(3), 69(1)].

Council may decide that there are areas within the municipality for which more development flexibility and direct control is needed, such as an urban core. Such areas can be designated as "direct control districts", and are regulated as council sees fit (Sec. 68).

The Land Use By-Law also establishes a system for applications and approvals of development permits, either through development officers or a Municipal Planning Commission.

Also included in The Planning Act, 1977 is a provision that land designated for public use under a Land Use By-Law must, within six months, either be acquired by the municipality, designated as reserve land, or have the designation changed. This is to protect land owners from having their land designated for public use and then left in limbo.

The procedure for adopting a Land Use By-law follows the same procedure as that for a General Municipal Plan (See Fig. 5). The By-Law is prepared by the municipality with public input, and public hearings must be held.

3.3.2.4 Area Structure Plans

The next step in the process of planning for the development of an area of land is the formation of an Area Structure Plan. We now have the Regional Plan to generally guide the development of a large area; the General Municipal

Plan to more specifically determine land uses within one municipality; and the Land Use By-Law to detail land uses by district and to handle the legalities of approving developments. An Area Structure Plan includes a large enough block of land to ultimately encompass several Subdivision Plans, and must conform to the General Municipal Plan and Regional Plan.

The purpose of an Area Structure Plan is to:

62(b) "describe

(i) the sequence of development proposed for the area,

(ii) the land uses proposed for the area, either generally or with respect to specific parts of the area,

(iii) the density of population proposed for the area either generally or with respect to specific parts of the area, and

(iv) the general location of major transportation routes and public utilities".[16]

It is not required that every area have an Area Structure Plan. However, by using this route, the municipality and the developer can agree on the basic plan for development of an area before going to the expense of producing more detailed Subdivision Plans.

The procedure for adopting an Area Structure Plan is similar to that for General Municipal Plans, as shown in Figure 5. One difference is that Area Structure Plans are generally drafted by the developer in the case of large scale developments.

16. Government of the Province of Alberta, The Planning Act, 1977, s. 62.

3.3.2.5 Area Redevelopment Plans

The Planning Act, 1977 substitutes Area Redevelopment Plans for the development schemes contained in the previous Planning Act. A local council may designate a previously developed area of the municipality as a redevelopment area, for the purpose of improving or intensifying the land use. Examples of this would be the rehabilitation of old buildings, the conversion of a waste disposal site to a park, or the replacement of open ditches with a storm sewer system.

The Area Redevelopment Plan must conform with any land use by-laws or other statutory plans affecting the area. Contained in the Plan are descriptions of the objective of the plan; proposed land uses; proposed public roadways, utilities and other services; the location of reserve land; and recreational and school facilities likely to be required. [Sec. 65(b)].

The Planning Act, 1977 allows for the imposition of a redevelopment levy to provide for the purchase of land for public use. This allowance is made because older areas often are lacking in schools, parks and recreational facilities.

The process for development and approval of an Area Redevelopment Plan is the same as that for the General Municipal Plan, as shown in Figure 5. As with an Area Structure Plan, Area Redevelopment Plans are not mandatory.

3.3.2.6 Subdivision Plans

The next stage in the development of a piece of land is usually that of subdivision. "Subdivision" is the division of a parcel of land into smaller parcels with separate titles. The preparation of a plan of subdivision and application for its approval is the most critical stage for the developer. Without approval to subdivide, the parcel can only be developed or sold as a whole.

As depicted in Figure 6, subdivision plans must conform to any existing Regional Plan, General Municipal Plan, Land Use By-Law, Area Structure Plan, or Area Redevelopment Plan for the area concerned. Having consulted all such statutory plans and by-laws, and taking into consideration the particular aspects of his piece of land (location, soil conditions, topography, existing utilities, etc.) the developer prepares a detailed plan of subdivision. Such plan will include the proposed layout for lots, roadways, reserve land and rights of way, and a description of the uses proposed for the land.

Application for subdivision plan approval is then made to the appropriate planning authority, which will be either a Regional Planning Commission, a Municipal Planning Commission, or the Planning Service Division of Alberta Municipal Affairs for areas not organized into commissions.

The subdivision application must take into consideration all of the details specified in the Subdivision Regulation which accompanies The Planning Act, 1977. The

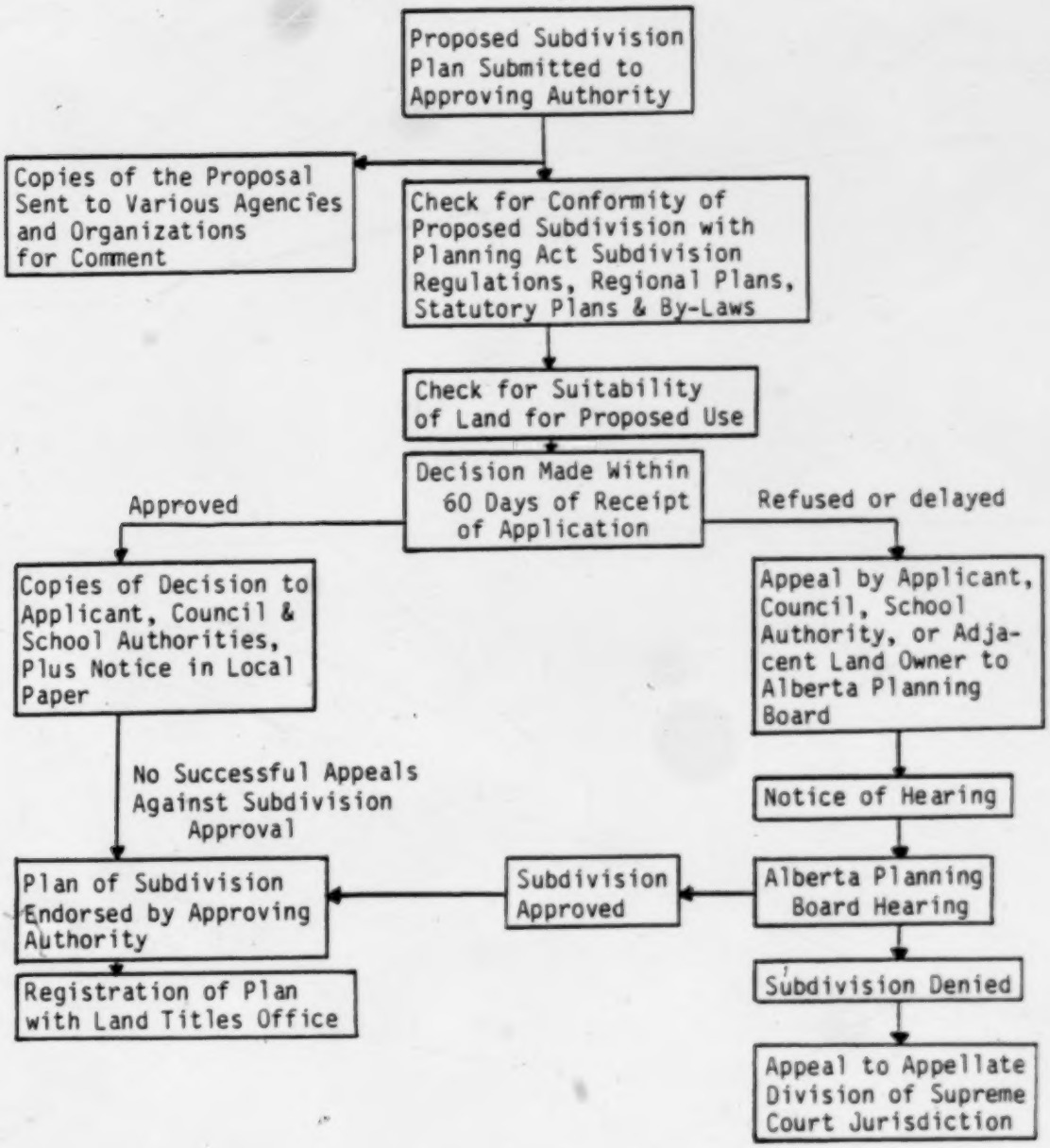
Proposed Subdivision Plan Submitted to Approving Authority
Copies of the Proposal Sent to Various Agencies and Organizations for Comment
Check for Conformity of Proposed Subdivision with Planning Act Subdivision Regulations, Regional Plans, Statutory Plans & By-Laws
Check for Suitability of Land for Proposed Use
Decision Made Within 60 Days of Receipt of Application
Approved
Refused or delayed
Copies of Decision to Applicant, Council & School Authorities, Plus Notice in Local Paper
Appeal by Applicant, Council, School Authority, or Adjacent Land Owner to Alberta Planning Board
No Successful Appeals Against Subdivision Approval
Notice of Hearing
Plan of Subdivision Endorsed by Approving Authority
Subdivision Approved
Alberta Planning Board Hearing
Registration of Plan with Land Titles Office
Subdivision Denied
Appeal to Appellate Division of Supreme Court Jurisdiction

Figure 6
Subdivision Application Process

Source: Planning In Alberta: A Guide and Directory, November, 1980, p. 24.[17]

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17. Although this figure is based on Figure 3.4 from the above noted source, some changes have been made to clarify the steps in the process.

approval process is as follows: (See Figure 6 for a schematic outline):

(a) Upon receipt of the application for subdivision approval, the subdivision approving authority sends copies to the various agencies and organizations depending on the location of the subdivision and the utility systems proposed (e.g. local school authorities, local board of health, Department of Environment, Department of Transportation). The approving authority must consider comments by these agencies, but is not bound by them. (Sec. 6, Subdivision Reg.).

(b) The approving authority checks that the proposed subdivision conforms with The Planning Act, 1977 and the Subdivision Regulations, as well as any regional plans, statutory plans and land use by-laws for the land in question. (Sec. 88).

(c) The approving authority checks that the land is suitable for the proposed use in terms of its topography, soil characteristics, storm water collection and disposal, potential for flooding, subsidence or corrosion, accessibility to a public roadway, availability and adequacy of a water supply, sewage disposal system and solid waste disposal, and the use of land in its vicinity. (Sec. 8, Sub. Reg.).

(d) A decision is then made on whether to approve, conditionally approve, or refuse the subdivision application. Such decision must be made within 60 days of receipt of the application. (Sec. 7, Sub. Reg.). If a decision is not made within this time frame, the applicant may appeal to the Alberta Planning Board or may agree to extend the time frame. (Sec. 103.1).

(e) Upon approval, copies of the decision are sent to the applicant, the local council and the local school authorities, and a notice is published in the local paper. (Sec. 90). Appeal of the decision may be made to the Alberta Planning Board within thirty days by the applicant, council, school authority, or by an adjacent land owner. (Sec. 103). Adjacent land owners cannot make appeals that are only against a proposed land use, provided such land use is in conformity with the municipality's by-laws.

(f) If an appeal is received by the Alberta Planning Board, a hearing is held with all affected parties given notice of such hearing and allowed to appear. Should the appeal be denied, the only possible recourse is to appeal to the Appellate Division of the Alberta Supreme Court on questions of law or jurisdiction. (Sec. 146).

(g) After the period of time given for any appeals, and provided that any conditions for approval have been

met, an approved subdivision application is then endorsed by the subdivision approving authority. [Sec. 102(3)].

(h) Within one year from such endorsement, the plan of subdivision must be registered at the Land Titles Office. [See Sec. 102(5)].

3.3.2.7 Replotting Schemes

For land which has been previously subdivided, The Planning Act, 1977 provides for the ability to re-subdivide the land through the process of a Replotting Scheme. Replots are useful in cases where an existing subdivision, which perhaps has never been developed, is inconsistent with adjacent subdivisions planned at different periods of time, or where the existing subdivision causes under-utilization of the land by today's standards.

Replotting schemes are seldom done, mainly because of the problem of the capital gains that are deemed to have occurred through the replot. We shall therefore not go through the details of the scheme which is contained in Sections 119 through 134 of The Planning Act, 1977. The basic procedure is to hold a hearing at which any registered landowners in the replot area may appear. A new subdivision is drawn up and applied for. Upon approval, the land is divided amongst the original land owners on the basis of their proportionate ownership in the original subdivision. Compensation for any costs or losses incurred by the landowner as a result of a replot can be applied for through the Land Compensation Board.

3.3.2.8 Development Permits

The final approval which must occur before any development takes place is the issuance of a development permit. A system for issuing the permits is set up under the Land Use By-Law, and is administered by either one or more development officers or a Municipal Planning Commission.

Applications for development permits are checked for their compliance with the Land Use By-Law. Exceptions to the By-Law may be allowed by the development officer if it is felt that the proposed development, which in any event must conform with the use specified for that property, will not unduly interfere with the amenities of the neighbourhood or materially interfere with or affect the use, enjoyment or value of neighbouring properties. [Sec. 67(5)].

Where a development permit has been denied, an appeal may be made to a Development Appeal Board. Members of an Appeal Board are appointed by council, but may not be a development officer or a Municipal Planning Commission member. In considering an appeal, the Development Appeal Board must determine whether the development will comply with any regional plan, statutory plan and land use by-laws in effect for the area.

3.3.3 Other Major Components of The Planning Act, 1977. Having outlined the major themes of The Planning Act, 1977 and the major components of the land use planning process as specified in the Act, there remain just two other items in the Act to which reference should now be made: the dedication of reserve and public land, and development conditions in the area of off-site levies and construction costs.

3.3.3.1 Dedication of Reserve and Public Land

The subdivision approving authority may require the developer to set aside portions of a proposed subdivision for the purpose of environmental reserve, municipal reserve or school reserve.

Environmental reserve consists of areas such as natural drainage courses, swamps, ravines, unstable land, land subject to flooding or unsuitable for development, and land abutting a body of water for the purposes of providing public access to the water and preventing pollution. (Sec. 95). Environmental reserve may be used only as a public park or else left in its natural state. [Sec. 107(1)].

Up to ten percent of the remaining land may be required to be set aside as municipal reserve or school reserve. [Sec. 96(2)]. In high density developments, this percentage may be higher still. (Sec. 98). As an alternative, the approving authority may require the payment of money in lieu of land. Municipal or school reserve land may only be used for public parks, public recreation areas, school purposes, or to separate areas of land with different purposes. [Sec. 107(2)].

Part of the parcel of land may also be required for the purpose of public roadways or public utilities. The Act specifies that a maximum of thirty percent of the parcel, excluding environmental reserve, may be required for such purposes. (Sec. 93). Section 93 also specifies that if the owner has provided sufficient land for roadway and utility purposes and it is less than thirty percent, the approving

authority cannot require that more be given.

Under this legislation, therefore, the maximum amount of land that the developer could be required to dedicate would be all land defined as environmental reserve land, plus forty percent of the remaining land, plus an extra allotment as reserve in high density developments.

3.3.3.2 Off-Site Levies and Other Development Conditions

The development of a parcel of land often results in the need for new or expanded facilities for water treatment and supply, sanitary sewage disposal, or storm sewer drainage. Section 74 of The Planning Act, 1977 allows the local council to include in their by-laws provision for the imposition and payment of what are known as "off-site levies", which may be used to pay for all or part of the capital cost of such utility facilities.

Another condition that may be required for the issuance of a development permit is that the developer pay for or construct certain facilities within the development or providing access to it. This may include:

(a) a public roadway to give access to the development;

(b) a pedestrian walkway system within the development or connecting to an adjacent system;

(c) utilities necessary to serve the development;

(d) parking facilities and loading and unloading facilities. (Sec. 75).

The off-site levies and development conditions to be imposed upon the developer can become an important part of the negotiation of a development agreement between the potential developer and the municipality.

3.4 Summary

This chapter has examined the planning process in Alberta. The evolution of planning legislation which caused the formation of planning commissions, subdivision regulations, public participation and land use controls were reviewed.

The major themes of the present day planning act were: a system of orderly development and use of land; the preservation of local autonomy; the minimization of the time required to bring land onto the market; the recognition of broad regional and provincial concerns; and the provision of public participation. As will be demonstrated later, the Groveco Project utilized the concepts of local autonomy and public participation to minimize the time required to bring land onto the market.

The discussion of the General Municipal Plan sets out the themes of the plan and the process required for the adoption of it. Later chapters document the fact that in the Groveco Project no delays were encountered with a plan of subdivision even though the Spruce Grove General Municipal Plan was being formulated. This would normally prevent development until it was completed. Likewise, the discussion of the Area Structure Plan shows that it must conform to the General Municipal Plan and is not a condition precedent to a plan of subdivision. In the Groveco Project, it will be shown that the first plan of subdivision was allowed prior to the

preparation of an Area Structure Plan and the plan of subdivision for the second phase was delayed until the adoption of an Area Structure Plan.

The Plan of Subdivision discussion documents the complexity and corresponding time-consuming process necessary in the regulation process. Later discussions of individual plans of subdivision will illustrate the amount of flexibility that the regulation process actually has.

The reader should bear in mind that the previous discussion of the regulation process should be looked at as a guide. Since the process is structured for local autonomy and is regulated to a large extent by the local politicians, the actual land use planning process by its very nature, becomes political.

The dedication of reserve and public lands and the legal provisions for off-site levies were discussed. The maximum amount of reserve lands which can legally be required are ten percent of the gross developable lands. The permitted uses of levies are defined. In the later chapters it will be shown how the Groveco Project provided double the reserve maximum (twenty-one percent of the land), and funds for levies which, in law, could not be demanded.

CHAPTER 4

THE HISTORY OF THE GROVECO PROJECT

4.1 Introduction

This chapter examines the history of the Town of Spruce Grove, the events which resulted in the Groveco/Town of Spruce Grove Agreement, and the events which occurred subsequent to the Agreement.

The location, growth, tax structure and potential of the Town are outlined in conjunction with some Municipal Council policies in regards to controlling growth and keeping a good industrial tax base.

In light of the history of Spruce Grove a series of events are detailed which illustrate how and why the Groveco Project came into being. The Project is followed through the formulation of: the Agreement, the Annexation, the first plan of subdivision, the development agreement, a resubdivision within the first plan, the Grove Meadows Residents Association, the Area Structure Plan, and the second plan of subdivision.

The chapter is concluded with a summary of the history.

4.2 The Town of Spruce Grove, Alberta

The Town of Spruce Grove is located within the western half of the Edmonton Metropolitan Area, eighteen kilometers west of the City of Edmonton. The Town is the most easterly-situated community within the

County of Parkland. Figure 7 indicates the location of Spruce Grove within the Edmonton Metropolitan Area, an area defined by the Edmonton Regional Planning Commission (E.R.P.C.) as the Edmonton Sub-Region.

Spruce Grove has experienced most of its residential population growth during the last decade. Between 1957 and 1967, the population increased by 113 percent, from 300 to 640 persons, or an average annual growth rate of 11 percent. During the ensuing five year period, however, the Town's population increased by approximately 400 percent, from 640 to 3,320 persons. This dramatic population increase continued between 1972 and 1979, during which time the Town's population rose by a further 153 percent, resulting in a 1979 population of 8,411. During 1980 the population rose by another 7.9 percent to 9,074 people, and in 1981 it rose to 9,749 people.[1].

The Town's population growth is primarily the result of a recent trend toward the decentralization of population growth within the Metropolitan Area. The factors which have caused this trend include: a differential in serviced land prices between the City of Edmonton and other metropolitan communities, the decentralization of employment centres within the Metropolitan Area, the high quality of regional access within the area, and a preference for residence in smaller communities.

The rate of industrial development in the Town has not yet matched the pace for residential expansion. It is normal, however, that a lag will occur between residential growth and industrial development as a part of the growth cycle of metropolitan growth centres such as Spruce

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1. Edmonton Regional Planning Commission, Spruce Grove: Community Survey, (Edmonton: E.R.P.C.), January, 1982.

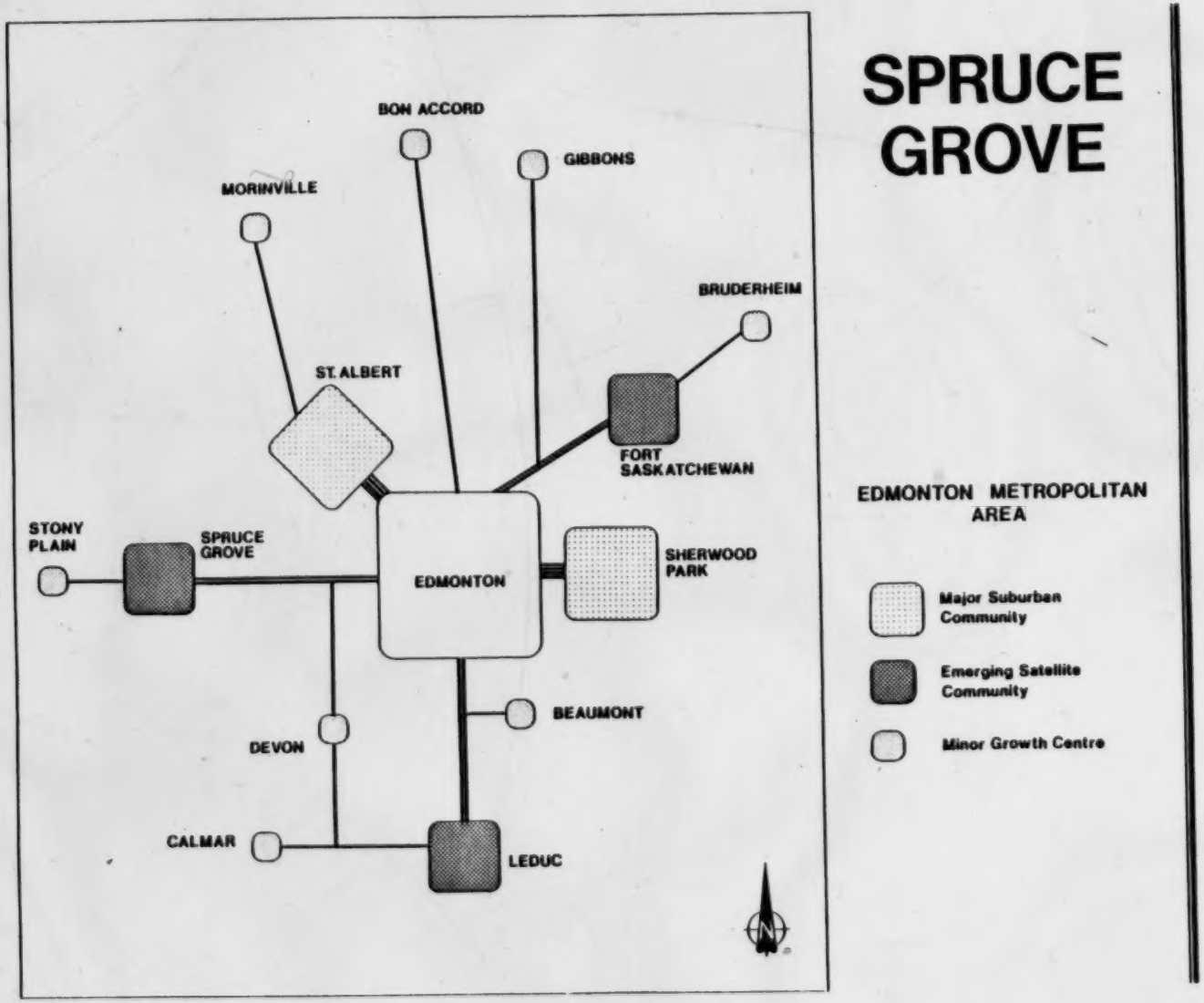

Figure 7 The Edmonton Metropolitan Area

Grove. Since 1972, a significant amount of industrial growth has occurred in Spruce Grove relative to the amount of industrial development which took place prior to the recent influx of population. In the last three years substantial industrial development has taken place and two annexations of 800 acres of industrial land have been approved by the Local Authorities Board.

The factors which have caused this recent industrial development in the Town include: the emergence of a local labor pool and a local market, the availability of competitively priced industrial land; the high quality of transportation access; and the Town's promotional activity regarding industrial development.

The current average price for industrial land in Spruce Grove is $45,000 per gross acre as compared to an average of $100,000 per gross acre in nearby industrial subdivisions located in the western half of the Edmonton Metropolitan Area.

Prior to 1967, Spruce Grove functioned as a stable agricultural service centre for the eastern rural portion of the County of Parkland. Since then it has emerged as one of the five major growth centres of the Edmonton Metropolitan Area. Most of the residents which have been attracted to Spruce Grove are employed outside the Town,[2] a fact that has resulted in a change in the primary function of the Town to that of a residential dormitory for Edmonton and the western portion of the Metropolitan Area. The recent industrial development which has been attracted to Spruce Grove suggests the potential for a second change in

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2. Town of Spruce Grove, General Municipal Plan, 1979, p. 8.

the function of the community, to that of a more independent and self-sufficient satellite community.

The Town's growth potential, like other communities in the region, is greatly dependent upon the growth of the entire Edmonton Metropolitan Area. The availability of affordable housing and local employment opportunities, as well as the attractiveness of residing in Spruce Grove, suggest a considerable potential for a continuing high rate of growth. The Spruce Grove General Municipal Plan has suggested that the Town will grow to a size of 22,000 to 28,000 people by the year 1996.[3]

The high quality of transportation access which will result from arterial road and highway improvements, and assuming the continuation of competitive industrial land prices within Spruce Grove, suggest the potential for a considerably higher rate of industrial growth than has occurred recently. As the population of the community increases, its labor pool and market will in itself serve to attract industrial and employment activity.

The Municipal Council of Spruce Grove has observed the rapid rate of residential development which the community has experienced during the last decade in relation to the Town's ability to provide the social services and recreational facilities required by its new population. As a result, it has formulated a number of policies which have considerable implication with respect to the amount of future residential and industrial development which may occur.

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3. Town of Spruce Grove, General Municipal Plan, 1979, p. 5.

The Council has formulated a residential growth policy which limits growth to an annual cumulative population increase of five to ten percent. This figure is, and has been, conditional upon demand and has been varied accordingly. The General Municipal Plan recommends that this policy will of necessity be varied upward over the short term and downward at a later time.

The Town is actively pursuing a policy of attracting industrial development to the community, the principal objectives of which are to achieve a more balanced ratio of assessment between residential and industrial development and to attain a functional balance between the employment and residential components of the community. Industrial growth would serve to offset the predominantly dormitory function of the Town, and enable it to function in the future as a more independent satellite community, similar to Fort Saskatchewan and Leduc.

4.3 The History of the Groveco Project

Prior to 1975, Spruce Grove baseball teams played on private land destined for future commercial development. On December 19, 1975, the Spruce Grove Municipal Council secretly sent representatives of Canada Trust out to talk to neighbouring landowners about the possibility of the Town purchasing 60 acres of recreational land. Many discussions were held with adjacent owners; however, it was not until November of 1976 that the Town Council offered a landowner, Dr. Dressen, $9,000 per acre for 240 acres located northeast of Spruce Grove. A non-refundable option fee of $50,000 was given to Dr. Dressen by the Council.

The Council would later claim that the price was fair and that they were forced to purchase from Dr. Dressen as neither Melcor Developments Ltd. nor any other landowner was prepared to sell any land to the Town. Furthermore, the Council maintained that Dr. Dressen would sell his land for $9,000 per acre only if the Town purchased all 240 acres.

News of this purchase was first made public in early 1977 and a group of citizens, lead by a prominent local businessman, Richard Fuhr, launched an extremely strong opposition. The Edmonton Journal of January 22, 1977, reported on a public meeting which was held to air the differing views on the subject. The Mayor, Ken Howery, was in favor of the purchase because of the realistic price and the perceived need for the recreational land. Opinions were expressed which indicated that Mr. Fuhr was opposed only because his land holdings and businesses were on the west side of town and this purchase was on the east side of town.

On February 14, 1977, a local realtor, Ken Page, representing a group of Spruce Grove citizens, applied for a District Court Order to quash the option agreement. An Examination for Discovery was scheduled for later that week.

By this time Council had agreed to a plebiscite on the land purchase and on an annexation proposal by Melcor Developments Ltd. to annex six quarter sections north of the existing Town boundary, and Melcor Developments offered to sell the Town 80 acres at $6,000 per acre if the Town dropped their option.

The week before the plebiscite the Recreation Board members went door-to-door promoting the land purchase concept.

On February 24, 1977, the plebiscites were held and 70 percent of 809 votes cast were against the land purchase. The Melcor Annexation was opposed 688 to 499. At the next Council meeting the Municipal Council decided not to oppose the Melcor Annexation so that they could get the 60 acres they desired.[4]

At the March 8 Melcor Annexation hearing the E.R.P.C. opposed the annexation because it wanted to wait for the results of a Growth Study being prepared by the E.R.P.C. itself. The County of Parkland was in opposition because there was no means of reaching an agreement on school reserves between the developer and the County.[5] Throughout March, Council pondered what to do with their option and how to get back their $50,000 non-refundable option payment.

An Edmonton lawyer, John Grotski, who had been closely following the developments in Spruce Grove, decided that it was time that someone else became involved to settle the matter.

Mr. Grotski's philosophy was simple: if a Town Council figured that 240 acres of land was worth $9,000 per acre, and that 60 acres could be used for recreation purposes and the balance developed and sold at a profit sufficient to pay for all the lands, then he, as a developer, could do the same and make a better profit.

In late March Mr. Grotski met with various Town Representatives and on April 5, 1977, he made a proposal to the Town. If the Town were to support the annexation of the 240 acres plus the annexation of a further

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4. Edmonton Journal, March 2, 1977, p. 31.

5. Edmonton Journal, March 8, 1977, p. 32.

320 acres which he would option, then a company in which Mr. Grotski would be a major shareholder, Groveco Developments Limited, would be prepared to pick up the Town's option, refund $50,000 to the Town, get the lands annexed, give 60 acres of land to the Town at no cost, and upon the development of the remaining lands it would give 25 percent of the profits to the Town.

Town Council met on April 6 and accepted the Groveco proposal in principle. Negotiations continued in secret and Dr. Dressen granted Council an extension of the option.

On April 25, 1977, Justice W. Stevenson ruled invalid the December resolution passed by Spruce Grove Council to purchase the option. In response Mayor Howery mentioned the possibility of a transfer of the option to an Edmonton development company. Howery angrily denounced the plebiscite decision as one of the gravest errors Spruce Grove residents had made in a long time.[6]

On May 10, 1977, a formal agreement between the Town of Spruce Grove and Project Century Limited was executed.[7] The terms were in conformance with the proposal made by Mr. Grotski in April.

On July 13, 1977, discussions with the Town, consulting engineers, and planning consultants were started to begin work on the annexation. The complete petition for annexation of the three and one-half quarter sections was filed with the Local Authorities Board on July 18, 1977. In August the Town of Spruce Grove requested an early hearing date on the

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6. Edmonton Report, April 25, 1977, p. 23.

7. A copy of this agreement was published in the local newspaper, the Spruce Grove Examiner, the following week.

annexation. Project Century Limited assigned the agreement to a new company, Groveco Developments Limited, formed expressly to develop the said lands.

On October 19, 1977, municipal elections were held in Spruce Grove. Of the seven members of the old Council (including the Mayor) only one incumbent was re-elected.

By November, Groveco had prepared a Conceptual Outline Plan for their landholdings. Spruce Grove Council held a special meeting on November 7 to review the Plan. The new Council, elected on a controlled growth platform, was faced with an agreement with Groveco to support an annexation application and the high growth which would result from the development. Council had previously approved a subdivision by Melcor Developments in the western portion of the town for 1,900 people. The Council policy of a five to ten percent annual growth rate would result in a growth of a maximum of 300 lots per year (approximately 800 people per year).

In conjunction with the Outline Plan, Groveco presented a Conceptual Growth Plan which projected a growth rate for Spruce Grove which would result in a population of 55,000 within the next thirty years.

On January 6, 1978, the Local Authorities Board announced that it would hear the Groveco Annexation Application on February 28.

On February 1, in a departure from its traditional refusal of large annexation bids over the previous two years, the Edmonton Regional Planning Commission threw its support behind Groveco's 560 acre annexation proposal by a vote of eighteen to three.

Mayor George Cuff was present at the E.R.P.C. meeting and explained to the commission that the Town supported the annexation because it would

add competition to the Spruce Grove market, long dominated by Melcor Developments Ltd. He also said that the Town had entered into an agreement with Groveco which would see Spruce Grove receive twenty-five percent of the net profits made on the subdivision. This point brought up the most controversy surrounding the E.R.P.C. approval, with some members of the Commission contending that the price of the lots would have to be raised to meet the added concessions given to the Town by Groveco. Mayor Cuff said, however, that the funds realized by the Town would either be put into more property in a land-banking venture by the Town or would be turned back into the annexed area for municipal improvements.

At the Local Authorities Board hearing on February 28, Mayor George Cuff submitted a presentation on behalf of the Town of Spruce Grove. A summary of his presentation is included below:

> "Spruce Grove recognizes that the viability of our Town will depend on its capacity to attract growth, both residentially and commercially.
> 'Our Town Council feels strongly that we need competition in the development of our community to ensure reasonable land and housing prices, adequate servicing, suitable major recreation and cultural facilities, and an improved position from which to bargain for additional concessions beneficial to the Town.
> 'As a Council we feel strongly about our right and our responsibility to dictate the rate of growth. That rate will depend upon our perception of our ability to provide services and amenities to both established and expected residents. That rate will depend upon our ability as a Town to accommodate new areas and still maintain our sense of community identity.
> 'As a Council we recognize that it is our duty to protect the best interests of the Town. We are perhaps relatively new as a Council but yet not naive enough to expect someone else to continually have our best interests paramount in their actions. We are supporting this application knowing full well that many problems will arise from time to time as we proceed, normal with any development, and yet feeling that we shall be able to govern wisely for ourselves and for future generations.

'The Town of Spruce Grove supports this application and solicits a positive response from the Local Authorities Board."[8]

In addition to the Mayor's support, the County of Parkland, the Edmonton Regional Planning Commission and the Provincial Department of Transportation presented evidence in support of the application for annexation. There was no evidence presented by any of the parties to the hearing in opposition to the proposed annexation.

The Consultant's Presentation to the Local Authorities Board on behalf of Groveco was prepared jointly by the planning firm of K.C. MacKenzie Associates Limited and the engineering firm of Stanley Associates Engineering Ltd. The thrust of the report was an examination of the major factors which affected future growth and development of the Town of Spruce Grove and a recommendation of an urban structure concept which would guide the future expansion of the Town. Such a plan, it was argued, would provide a more detailed framework within which specific subdivision and development proposals could be evaluated and approved as each planning unit developed.

It examined the choice of directions in which the Town could choose to grow, the municipal servicing considerations for the proper management of storm drainage, water and sanitary sewer facilities, the need for competition in the land development industry within Spruce Grove, the relationship of the new growth areas with the existing community

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8. Town of Spruce Grove, Presentation to the Local Authorities Board Re: Proposed Annexation by Groveco Developments Ltd. and The Town of Spruce Grove, February 28, 1978.

structure, and the provision of public facilities, particularly school and recreational facilities.

On March 15, 1978 the Local Authorities Board announced that the Groveco Annexation Application was approved retroactive to January 1, 1978.

In August, 1978, the Phase I tentative plan was reviewed by the Town Council, who had some concerns about the size of the lots and the number of lots. Following a further series of information meetings, Groveco was given approval by the Town on October 10 to strip the topsoil from the land in anticipation of an early spring construction program.

On December 5 the Town gave formal approval to the Plan of Subdivision. Engineering design began in mid-October and discussions with the Town commenced on a development agreement.

On January 24, 1979, the E.R.P.C. gave conditional approval to the Plan of Subdivision for Phase I. The Town stated that in order to promote competition among developers and not unduly delay development, it was decided by the Spruce Grove Council that the proposal could be submitted prior to completion of the General Plan and an Area Structure Plan. One month later the Town of Spruce Grove gave permission to Groveco to commence construction, at their own risk, of a sanitary outfall line from the Phase I lands north to the Town sewage lagoons, a distance of approximately two miles.

On March 6, 1979, By-law 477, a zoning by-law, was given first reading. The proposed development agreement was referred to the Planning and Development Committee for review and negotiation. On April 3, a public hearing was held in regards to the rezoning. No objections were made and second reading was given.

Underground service construction began and development agreement negotiations continued. On May 1, the third reading of the zoning by-law was tabled until the development agreement was agreed to. By June 11, the sanitary sewer and water distribution system was completed and the Town formally approved the Phase I development agreement.

By the beginning of July the project was ninety-five percent completed in regards to sanitary and storm sewers and water distribution. The individual house services were only fifty-six percent completed but it was decided to allow the road contractor as well as the house builders on site to commence their construction activities.

By mid-August construction was at its peak. The extensive co-ordination of various contractors and companies paid off and for the first time in the Edmonton region both the underground and surface contractors were on site, as well as Calgary Power, Capital Cable TV Ltd., Northwestern Utilities Limited, and four house builders. This large a number of contractors had never been assembled on one site before and interest in the project was quite noticeable in the industry.

The entire subdivision was paved by the end of September and landscaping from the entrance of the subdivision to the show home sites was also completed. In October the subdivision was officially opened and the builders began selling houses.

Problems with the Town began to surface in 1980 over the profit-sharing. The Town maintained that they were entitled to twenty-five percent of the reported profits on the annual financial statements prepared for tax purposes, while Groveco maintained that the Town was entitled to twenty-five percent of the profits calculated

annually based on the terms of the 1977 agreement. Groveco maintained that there was a difference between the way the Department of National Revenue allows expenses to be deducted and how the agreement with the Town was worded. It was Groveco's intention to pay off all land purchase loans and servicing loans prior to any profit being realized.

In January the Spruce Grove Town Council received a Schedule of Net Profits for the fiscal year ending June 30, 1979, showing a net loss of $7,890,766 to date. Council referred this schedule to the Finance and Administration Committee for further study.

Groveco had commenced preparation of an Area Structure Plan in February for its lands, and requested that the Planning and Development Committee work with Groveco in the preparation of the plan. In a surprise move the Committee decided that it would provide no input until a draft document was provided to them.

In April, the Town decided that it would require more in the way of levies and negotiations on this matter commenced along with the profit-sharing negotiations. As a policy the Town decided that all new residential and industrial growth should pay its own way, and began to examine the costs to the Town of the growth. Negotiations with Groveco and the Town on the profit-sharing and the new levies were slow with both sides remaining firm in their positions.

In June, Groveco applied for subdivision of three serviced blocks of land in the subdivision on behalf of Nu-West Development Corporation which had taken out an option on the land. Groveco had originally projected thirty-six housing units on the land and had serviced it accordingly. The Nu-West proposal was to put up forty-eight housing units.

On June 29, the Area Structure Plan was discussed by the Planning and Development Committee, and approved for circulation. Replies and comments by all agencies and authorities were required before July 22.

On August 11, the Town Council approved the subdivision of the three blocks of land into forty-five lots. Two weeks later Groveco submitted an application to rezone five remaining blocks of land to a Comprehensive Development zoning.[9] This was referred to the Planning and Development Committee for comment.

The E.R.P.C. Subdivision Committee Meeting of August 20 reviewed the Nu-West application and gave the subdivision approval subject to the normal conditions. As a result of this approval adjacent land owners were notified pursuant to Section 103 of the Planning Act, 1977.

The rezoning By-law #549 for the three blocks optioned by Nu-West, as well as the other five blocks owned by Groveco, was given first reading on September 8, and a public hearing was scheduled for the upcoming Council meeting of October 2.

About this time the existing residents of Grove Meadows first saw what had been approved by their representatives on Council and by the E.R.P.C. In general, most of the residents who lived across the road from the Nu-West parcels lived in single family detached homes on lots 45 feet wide and 110 feet deep. In order to explain to the citizens what was planned Nu-West held a public meeting on October 1. The meeting

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9. The Comprehensive Development zoning was a category of zoning in the Town which would allow the subdivision of lots which were smaller than normally allowed. Approval of a Plan of Subdivision by the Town Council which shows the type and placement of housing is required.

would also allow Nu-West to judge the opposition to their proposal and to incorporate what changes they could prior to the Public Hearing the following night.

Opposition from the residents was both strong and vocal. Densities were too high, zero-lot line lots were opposed, parking problems would occur, spatial separations were not great enough, subsidized housing was opposed -- in general terms, the entire proposal was opposed.

At the Public Hearing the following night the entire matter was tabled pending the outcome of an appeal to the Alberta Planning Appeal Board launched by the residents.

The Appeal was heard on January 26, 1980, and the decision was announced on February 9. The Appeal Board ruled that since the subdivided lots were not zoned for residential usage (they were zoned for agriculture) that the decision to allow subdivision by the E.R.P.C. contravened Section 88(1)(b) of The Planning Act, 1977. The appeal was therefore allowed and the approval of the subdivision was revoked.

Since it was the policy of both the Town of Spruce Grove and the E.R.P.C. to withhold zoning approval until after subdivision and even as long as the execution of a development agreement, the decision had far reaching ramifications. The E.R.P.C. and all the member municipalities would be required henceforth to rezone lands prior to granting subdivision approval, thus allowing public participation to occur prior to subdivision decisions being made.

In the meantime the Spruce Grove Council had reviewed the levy policy and since the other developer in Spruce Grove, Melcor Developments Ltd., had consented to pay them, they were adopted as policy without Groveco's agreement.

Discussions and meetings between the Town and Groveco in regards to the profit-sharing were also taking place but resolution seemed impossible as both sides maintained their positions: Groveco claimed that net profits could only occur after all debt was retired and calculations had been done on a cash basis; the Town maintained that profit sharing was to be done on a yearly basis according to generally accepted accounting procedures.

Groveco reapplied to the Town for subdivision and zoning on all the parcels to the R1D zoning category.[10] Nu-West in the meantime had exercised its option to purchase and reapplied for subdivision approval of its lands.

First reading of By-law 559 was given on January 26, 1981 and a public hearing was scheduled for February 23.

At the public hearing, opposition was expressed because the higher density would increase traffic problems, make other services inadequate, and would lower the quality of life that the area residents wished to maintain. Council defeated the second reading of the rezoning by-law thereby halting the process.

The following evening a representative of Groveco met privately with the residents' group and worked out a compromise solution on the Groveco lands which would allow a zoning of R1C[11], which was the zoning of the

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10. An R1D zoning is a zoning which will allow lots as small as 32 feet wide. This proposal was, in part, for lots even smaller than 32 feet and therefore the exact layout and type of housing was required prior to the Town Council accepting it.

11. R1C zoning is a zoning for lots larger than 32 feet wide and smaller than 45 feet wide. It was used extensively in the initial subdivision.

residents across the street from the proposed houses, and an R1D zoning across the street from the existing vacant lots also owned by Groveco. A meeting was scheduled for February 26 with representatives of the residents, the Town Administration, the Town Council and Groveco, and the compromise was reached. Although Groveco had provided services for sixty lots, only fifty-six lots would be subdivided.

Groveco again submitted an application for rezoning based on the compromise solution and a public hearing was scheduled for the March 23 Council meeting.

At the public hearing a further compromise was extracted from Groveco in that the lanes would be paved behind those lots with an R1D zoning. Representatives of the residents spoke in favour of the compromise and second and third readings were given to the rezoning.

In April, attention focused on the Area Structure Plan. A revised Area Structure Plan was sent to the Town on April 9. At the same time, representatives of Groveco were meeting with some representatives of the residents, and on April 13 a meeting was held wherein an association was formed, known as the Grove Meadows Residents' Association. Initially the Association would meet with Groveco to discuss and provide input into the planning process of the Groveco lands. Emphasis was put on the Area Structure Plan, and proposed copies of it along with the supporting documentation were distributed. Brief mention was made of a draft tentative plan of subdivision for the next phase of development.

The following week the Association met again to discuss the Area Structure Plan and further meetings were scheduled for more imput into the Area Structure Plan and the next plan of subdivision. On May 5, the

Area Structure Plan by-law was given first reading and a public hearing was scheduled for May 25. On May 12, the Grove Meadows Residents' Association met without a Groveco representative in attendance and the Area Structure Plan, in principle, was accepted.

Meanwhile resolution with Groveco over the profit-sharing and the new levies had not been reached. Relations between the Town Council and Groveco were at an all-time low as neither seemed able to trust the other.

The Public Hearing was attended by representatives of the Residents' Association who stated that they supported the Area Structure Plan. Second reading was given but third reading was delayed, as the Plan required further amendments. In a newspaper article published a couple of days later the Mayor was quoted as saying that he was in no hurry to pass the Plan until a financial agreement between the Town and Groveco had been arranged.

At the June 22 Council meeting the Administration was directed to get legal and accounting advice so that a firm and clearly stated position could be taken by the Town in regards to the profit-sharing. At the meeting, although the Development Control Officer and the Chairman of the Planning and Development Committee recommended third reading of the Area Structure Plan By-law, the matter was again tabled.

Representatives of the Groveco Board of Directors met with Council on July 13. On July 27, they again met with Council as a whole, together with the Town's solicitors, and reached an agreement. Groveco agreed to pay all of the new levies. Groveco and the Town agreed that the profit-sharing should be solved in a three-step process. Firstly the Town's and Groveco's auditors were to meet and agree on the amounts under

dispute under each position. Secondly, legal representatives of the Town and Groveco would meet to reach agreement on the pertinent facts of the dispute. Thirdly, the parties would take the facts to an independent third party for arbitration. That evening Council gave the Area Structure Plan third and final reading.

Adoption of the Area Structure Plan allowed Groveco to advance a tentative plan of subdivision for approval. Negotiations had been ongoing with the Grove Meadows Residents' Association in regards to this plan so that by August 24, when the Town Council gave first reading to the Lakeside Land Use By-Law, agreement had been reached with the residents.

At the same time Groveco submitted a Plan of Subdivision for the sixty acre park which under the 1977 Agreement with the Town would be donated to the Town. Second readings were given on September 1 for both subdivisions, and third readings were given on October 13.

4.4 Summary

The Town of Spruce Grove and Groveco Developments entered into an agreement in 1977 which was unique in many aspects. In return for the Town supporting the annexation of certain lands owned by Groveco, and their development in an orderly fashion, Groveco agreed to donate a sixty acre park over and above normal dedications, and twenty-five percent of the profits from the subsequent development and sales of the lands.

The original Town Council which entered into the Agreement was replaced in an election with a new Council which had reservations about the Agreement. Nevertheless, the new Council appreciated the benefits of the Agreement and supported the annexation of the lands to the Town.

The first phase of subdivision was done prior to the Town having a General Municipal Plan. It was also approved prior to the adoption of an Area Structure Plan for the Groveco lands. Although this is not prohibited by law, it is very rarely, if ever, done. The fact that it was done in the Groveco Project is evidence of the willingness of the Town Council (the regulator) to speed-up development as a result of the Agreement.

The resubdivision of the blocks of land was generally opposed by the residents of the lots adjacent to the proposed subdivision who successfully appealed the subdivdision approvals on the basis that the lands were not properly zoned.

Interpretation differences of the profit-sharing arrangement in the 1977 Agreement and the new levy policy tended to delay the approvals of the Area Structure Plan and as a result the Plan of Subdivision for the second phase. This illustrates how the regulation process can be delayed by the regulator. It also points out a problem with the very nature of such agreements between the regulator and the developer. That is, in addition to the changing of people and personalities in the regulatory environment, an agreement must be structured in such a manner as to be completely clear and enforceable by both parties over the life of it, even when the expectations and wishes of the parties change.

The following chapter looks in detail at the actual processing of the Groveco Project.

CHAPTER 5

THE REGULATION PROCESS IN SPRUCE GROVE

5.1 Introduction

The previous chapters have documented the literature review of land use regulation, the actual land use regulation statutes applicable to Spruce Grove, and the history of Spruce Grove and the Groveco Project. Considerable attention was paid to the processes which had a monetary effect on the developer or the regulator, as well as other processes which affected the timing of the regulation process.

In Chapter 3 the planning process was examined in detail. The intent and the actual legal content of the planning legislation applicable to Groveco Project was examined in detail. Particular attention was focused on the regulation process as it related to the Area Structure Plans, Subdivision Plans, dedication of reserve and public lands, and on off-site levies. It was noted that local autonomy in land use regulations in Alberta is favoured and controlled only in so far as to facilitate the orderly development and use of land and public participation in the regulation process. Mention was made that the use of local autonomy and public participation in the process could be done in a minimum time.

The proper schedule of land-use documents was previously demonstrated in conjunction with the actual schedule of the land-use

documents in the Groveco Project. In this chapter the reasons for the particular Groveco schedule are examined. Discussions of the regulation of levies and reserves were previously introduced and are now developed in this chapter.

This chapter examines in detail the variations from the theoretical or normal land-use regulation process in Spruce Grove. It relates these procedural variances to the agreements between the Town (regulator) and the developer, and it draws conclusions about the direct relationship between the regulation variances which were in the vested interest of the Town.

5.2 The Regulation Process in Spruce Grove

This section examines the individual processes for the annexation, the Phase I Plan of Subdivision, the resubdivisions of portions of Phase I, the Area Structure Plan, and the Phase II Plan of Subdivision.

5.2.1 The Annexation Process. As a condition of the agreement executed between the Town of Spruce Grove and Groveco Developments Limited dated May 10, 1977, the Town agreed to support an annexation of the Groveco lands. However, between the signing of the agreement and the formal hearings before the Local Authorities Board (L.A.B.), elections were held and only one Councillor from the previous six Councillors and Mayor was re-elected. The new Council, elected on a "controlled growth" platform, met with Groveco representatives on November 7, 1977, to review the Conceptual Outline Plan (which was an unofficial Area Structure Plan) and a Conceptual Growth Plan.

Throughout December 1977, the Annexation proposal was discussed and on February 1, 1978, the Council representative at the E.R.P.C. won support for the annexation by an overwhelming majority.

The L.A.B. hearings were held on February 28, and fifteen days later the decision was announced that the lands had been annexed retroactive to January 1, 1978.

The Annexation process had taken approximately seven months, six and one half of which were spent waiting for a hearing.

Figure 8 illustrates this process.

5.2.2 The Phase I Plan of Subdivision. Following the retroactive annexation to January 1, 1978, of the Groveco lands to Spruce Grove, the detailed planning for the lands began.

It appears that a period of seven months went by before a tentative plan of subdivision was submitted for approval. Examination of the minutes of the Groveco Management Committee reveal that although work was proceeding it was progressing at a slow pace. It was not until October of 1978 that the plan of subdivision was presented informally at a dinner meeting to the Spruce Grove Town Council.

It appears that the cause of the delay can be placed with the developer for a period of three or four months due not to any government regulations but due to lack of proper project management.

On October 30, 1978, a tentative plan of subdivision was submitted to the E.R.P.C. The submission was incomplete in some respects and it was not until November 14 that the complete package was submitted and accepted by the E.R.P.C. as being complete.

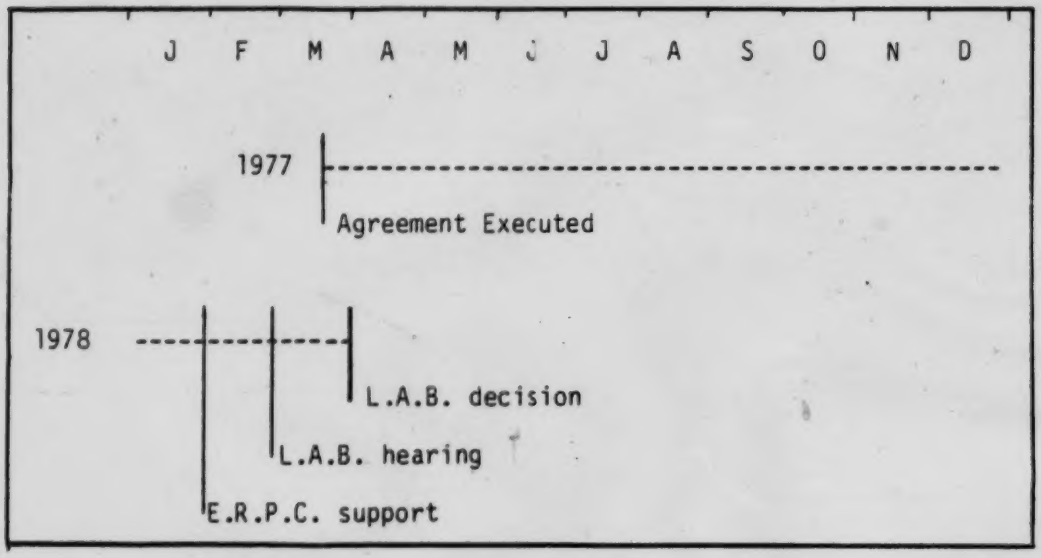

Figure 8

The Annexation Process

The submission contained 266 lots, 10 of which were parcels of land which would require further subdivisions into single-family detached and semi-detached building lots. These further subdivisions would result in lots smaller than any ever created in Spruce Grove. The existing zoning bylaw would only allow lots of this nature under a classification known as Comprehensive Development (CD). This CD classification required a submission of the individual houses, their relationship to one another and the identification of individual lot configurations to be approved by the Town Council. This was a new concept for the Metropolitan Edmonton area and would be tried out initially in Spruce Grove.

The balance of the lots were single-family and ranged in size from 45 feet wide up to 65 feet wide. The general layout of the plan included the extensive use of cul-de-sacs. Fourteen cul-de-sacs were designed in various lengths and configurations to create a feeling of isolation and quietness in the completed subdivision. The use of cul-de-sacs can lower the costs of servicing lands, however the preponderance of pie-shaped lots which result from the design can greatly reduce the density of a subdivision and hence the yield to the developer.

On December 5, the Town Council gave a conditional approval to the plan of subdivision and recommended its acceptance to the E.R.P.C.

The E.R.P.C. gave approval to the plan on January 24, 1979, and issued the notice of decision on February 5. The approval was again conditional, the two main conditions being the execution of a development agreement and the rezoning to residential purposes of the land.

It should be noted that the plan of subdivision was a spot development in the middle of a field of barley east of all existing

development in Spruce Grove. Though a Conceptual Development Plan had been prepared for the annexation no Area Structure Plan had been prepared or formally adopted. In addition, the Town was preparing the General Municipal Plan and refused to accept an Area Structure Plan submission from the other developer (Melcor Developments Ltd.) in Spruce Grove until the General Plan was adopted. The attitude of the Town Council was one of co-operation and encouragement to develop, coupled with a hesitation that the decision to proceed with development could be interpreted by the electorate as uncontrolled growth.

The Town Council gave first reading to the zoning bylaw on March 6. This bylaw covered all of the single-family lots, but not the lots which would require future subdivision. On April 3, a public hearing was held and no objections were made. As a consequence, Council gave second reading to the bylaw but withheld third reading until a development agreement was executed.

The lack of zoning even though the lands were conditionally approved for subdivision was clearly contrary to the provisions of The Planning Act, 1977. However, this was the norm at the time and was an accepted practice throughout the E.R.P.C. The public participation occurred after subdivision and at the zoning stage which was contrary to the intent of The Planning Act, 1977, however the Municipal Governments felt that to grant zoning before a development agreement would take away some of their negotiation strength in gaining concessions from the developer.

In the case of Groveco, with the free sixty acre park and the twenty-five percent profit split, it was assumed by Groveco that the negotiations would run smoothly. However, negotiations were extended due

to the Town insistance that levies, including those allowed in The Planning Act, 1977 and those which would be classified as 'developer contributions,' were to be paid by the developer.[1] The second main area of concern was limiting the number of lots which the Town would issue building permits on.

On June 11, the issues of the agreement having been resolved mainly in the Town's favor, the development agreement was executed and the zoning bylaw was given third reading. The letter from the Town to the E.R.P.C. certifying that the subdivision conditions had been met was sent on June 12. The next day the E.R.P.C. signed the linen and on July 31, 1978, the linen of the plan of subdivision was registered.

Figure 9 illustrates the registered plan of subdivision. This plan shows 252 single-family lots and 11 lots which were capable of being subdivided into 127 lots.

Figure 10 illustrates the Phase I Subdivision Application Process.

5.2.3 The Resubdivisions of Phase I. The linen plan detailed ten lots which could be subdivided further into single-family and semi-detached housing lots. These ten lots were subdivided in the three separate subdivision applications.

Firstly, however, an explanation of the philosophy behind these subdivisions is required. As detailed in Chapter 2, housing demand was high at the time. Interest rates were in the eleven percent range and the price of housing had risen to an all-time high level.

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1. Developer contributions were funds which the Town required prior to the execution of a development agreement. They included monies for arterial roads, recreation levies, and administration levies.

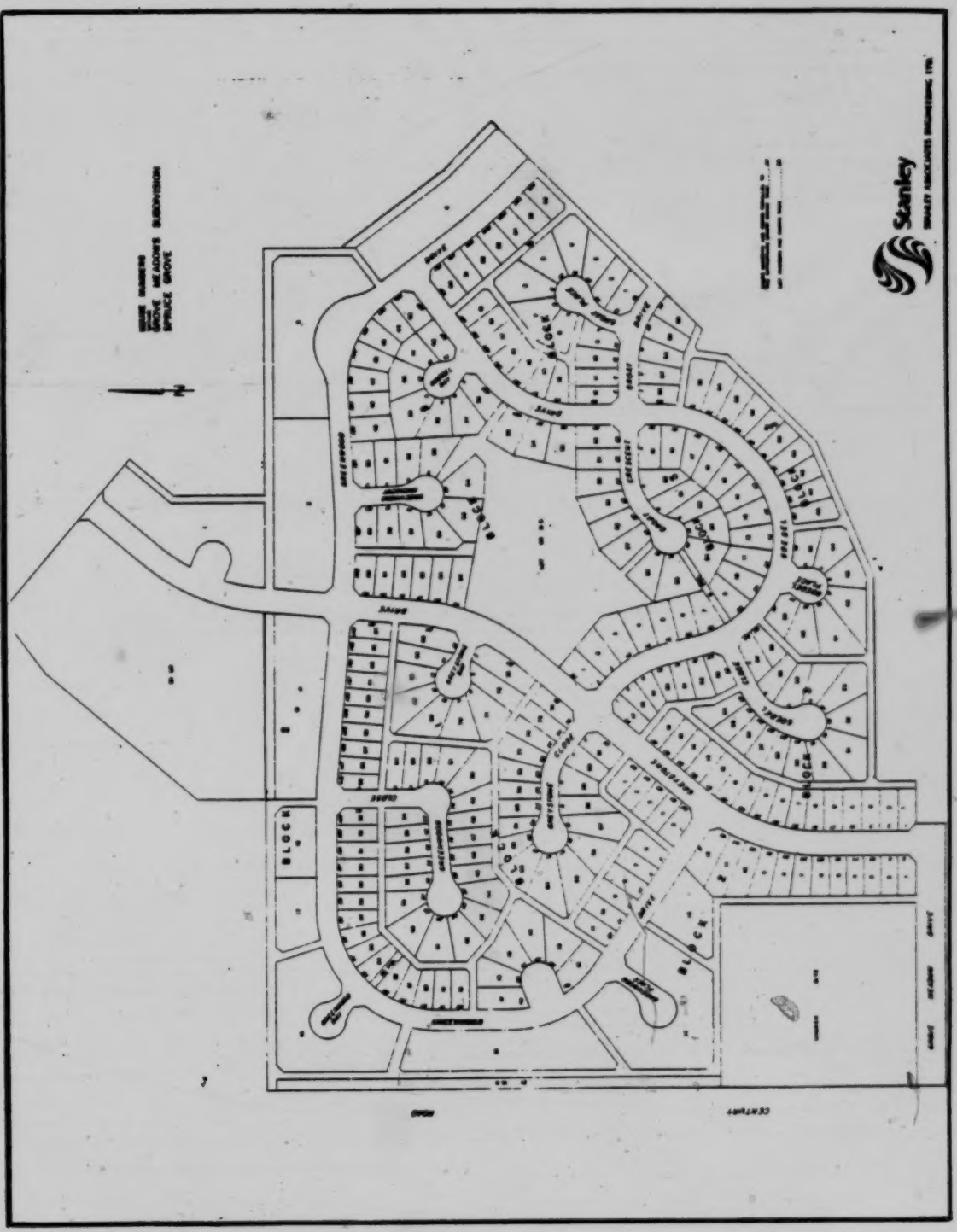

Figure 9 The Phase I Plan of Subdivision

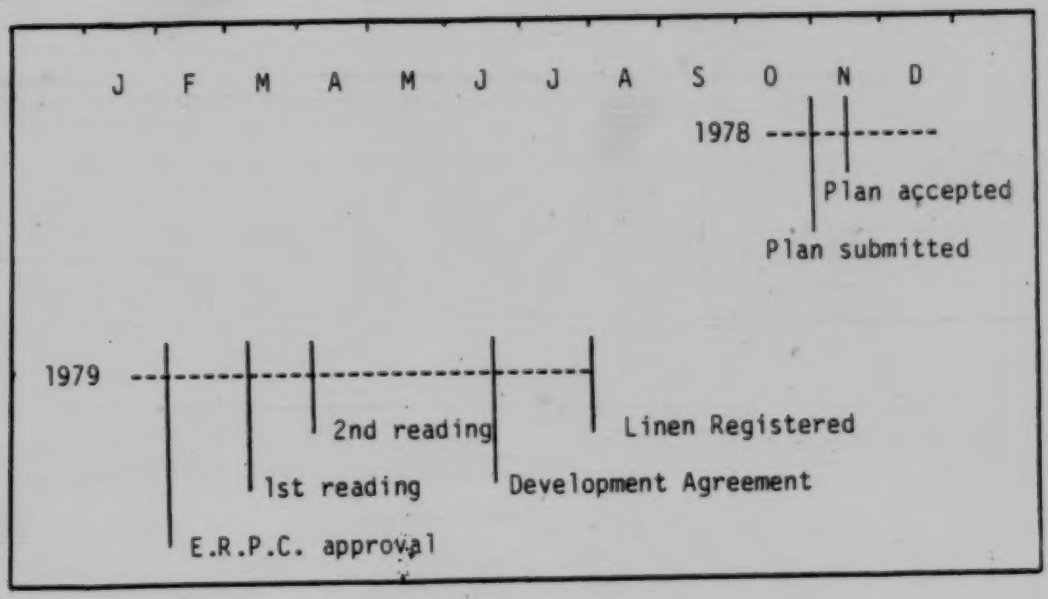

Figure 10

Phase I Subdivision Application Process

The target market which Groveco was aiming for was the first-time homebuyer who was very price conscious. The price of serviced land was selling in the area of $500 per front foot and the E.R.P.C., the Town, the builders and Groveco were all in agreement that one way to save the homebuyer money was to give him the home he wanted on a lot which fit the size of the home. The wasteage of eight feet of unnecessary side yard would mean an extra cost to the homebuyer of $4,000. It was felt that the savings to the homebuyer through the elimination of the side yards would be such that the homes in the Groveco subdivision would be chosen first because of the most cost-effective price.

Informal assurances were given by the E.R.P.C. and the Town Council that approvals and rezonings would be easily obtained and that no delays would be experienced whatsoever.

The following resubdivisions of Phase I are broken into three sub-sections: the first being the Somerset Subdivision, the second the Nu-West Subdivision, and the third the Groveco Subdivision.

5.2.3.1 The Somerset Subdivision

The Somerset Subdivision was the first subdivision of the lots within the Phase I Plan of Subdivision. Somerset, a housebuilder, purchased two lots and proposed to subdivide the two lots into thirty-two housing lots and to mix single family houses together with semi-detached houses under the CD zoning. (See Figure 11). Somerset carefully planned the layout of the lots and house types and prepared an extensive amount of illustrative material for the Town Council so that they could picture in their minds what the finished subdivision would look

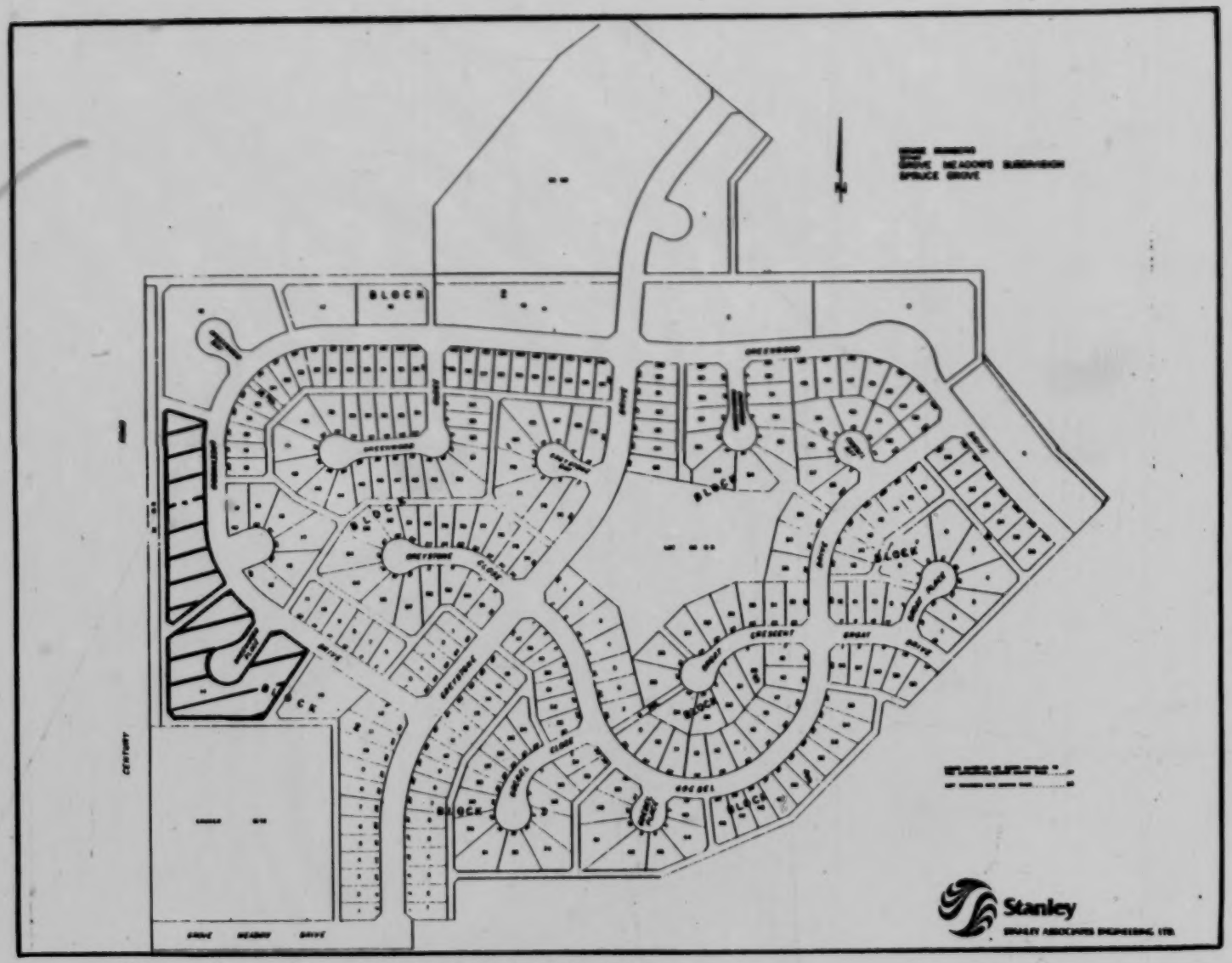

Figure 11 The Somerset Subdivision

like. As expected, the process from application for subdivision to final acceptance by the E.R.P.C. took under the statutory sixty days. In an extreme spirit of co-operation the Town of Spruce Grove allowed Somerset to commence construction of the houses prior to having the linen plan registered or the land rezoned.

5.2.3.2 The Nu-West Subdivision

Unlike the Somerset Subdivision, the Nu-West Subdivision has a history of delays and increased costs. This subdivision was not made until June of 1980 and by that time the homes across the street from two of the three lots were occupied. (See Figure 12). The three lots had been serviced with the intention ultimately of providing thirty-six homes on the lots. The Nu-West plan of subdivision specified forty-eight homes. Nu-West prepared extensive plans to illustrate to Council the siting of the homes on the lots, the lot sizes, and the streetscape. On August 11, Council approved the subdivision and recommended its acceptance to the E.R.P.C. It should be noted that the general public and specifically the homeowners across the street were not aware of the subdivision approval at that time.

On August 20, the E.R.P.C. gave conditional approval to the subdivision and in accordance with The Planning Act, 1977, sent out notification letters to the adjacent landowners. Council gave first reading of the zoning bylaw on September 8, and advertised a public hearing for October 2.

Opposition to the subdivision was strong and appeals were launched with the Alberta Planning Appeal Board. At the

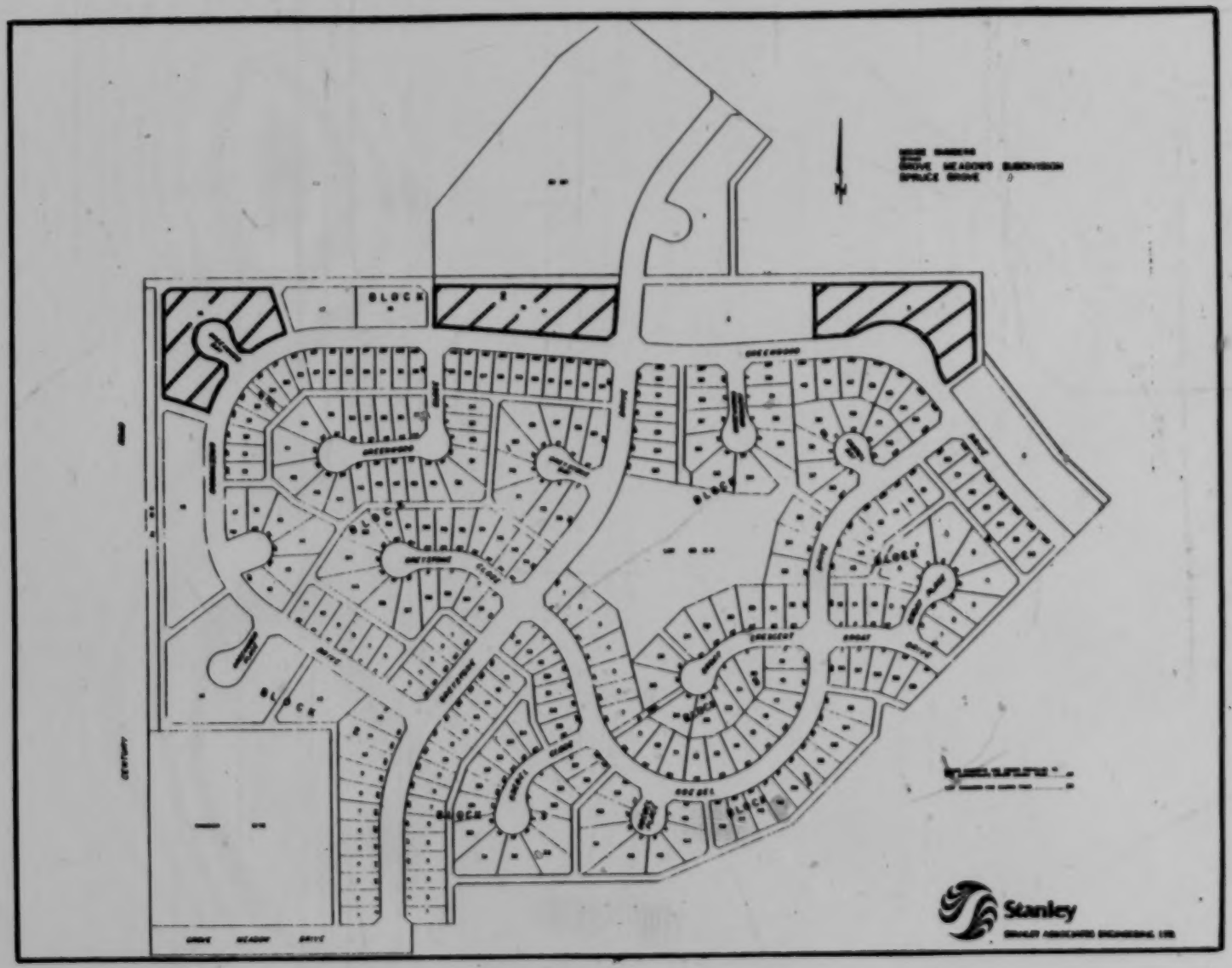

Figure 12 The Nu-West Subdivision

public hearing on October 2, the Town Council acceded to the wishes of their electorate and withheld second reading of the zoning bylaw pending the outcome of the appeal.

The appeal was heard on January 26, and on February 9 the decision was announced that the subdivision contravened Section 88(1)(b) of The Planning Act, 1977, in that the land was not properly zoned prior to subdivision approval. The appeal was allowed and the approval of the subdivision was revoked.

Nu-West reapplied to the Town for rezoning to an R-1D classification and reapplied for subdivision of forty-two lots. On February 23, a second formal public hearing was heard on the zoning and it was again defeated.

Nu-West then reapplied a third time. By this time Nu-West had met with representatives of the residents but had been unable to arrive at a compromise settlement.

The matter was finally resolved at the Town Council level when Council decided to give Nu-West permission to subdivide thirty-three lots into an R-1C classification.

5.2.3.3 The Groveco Subdivision

By August of 1980 Groveco had made the decision to subdivide the remaining six lots. At that time they were unsold due to the downturn in the housing market caused by rising interest rates which lowered the affordability of houses. It was thought that the approval process, as was being illustrated by the Nu-West case, was wrong and that the land should be rezoned prior to subdivision. The Planning and Development

Committee thought otherwise and replied that no zoning applications would be accepted until the lots had subdivision approval.

Groveco reapplied early in 1981 and was given first reading of the zoning bylaw. (See Figure 13). The zoning and subdivision application was advertised and a public hearing was held on February 23 in conjunction with the Nu-West public hearing. At that time the zoning was defeated and the subdivision was refused.

The next evening a Groveco representative met with representatives of the residents and worked out a compromise solution that all parties could live with. Two days later a lunch meeting was arranged with the residents' representatives, the Town Council, the Town Adminstration, and Groveco. The compromise was discussed and agreed to.

The following day Groveco reapplied for a new zoning which was a mixture of R-1C lots across the street from the resident representatives, and R-1D lots across from vacant lots and showhomes. First reading was given and a public hearing was scheduled for March 23.

At the public hearing the residents representative made a presentation which in general supported the compromise solution while still expressing frustration with the regulation process. That evening the zoning was given second and final readings and the subdivision was approved.

5.2.4 The Area Structure Plan. The Area Structure Plan had not been prepared and adopted prior to the adoption of the Phase I Plan of

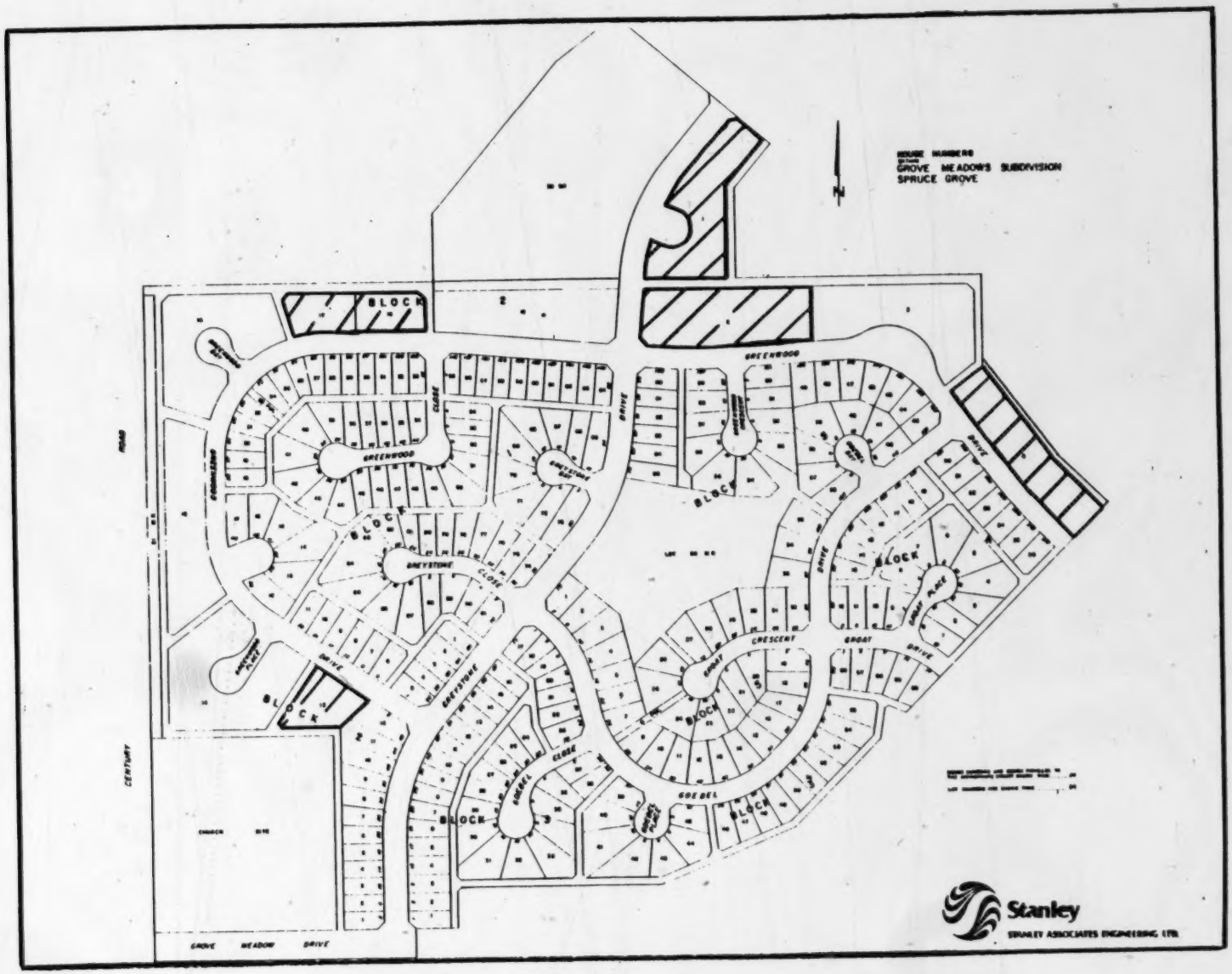

Figure 13 The Groveco Subdivision

Subdivision. It would, however, be required prior to the approval of the Phase II Subdivision.

Work commenced on the document in February of 1980 and a letter was sent to the Town requesting meetings to discuss the concepts with the Town. Relationships between the developer and the Town had deteriorated due to the profit-sharing/levy dispute and the Town replied that it would only consider a plan which was submitted for formal approval.

Without Town input a plan was prepared in a very loose manner and submitted for approval on June 29, 1980. The Planning and Development Committee requested comments from the various committees, agencies, boards and departments in the Municipal and Provincial government involved. The reviews were noted and the plan was revised to take care of the various concerns expressed. Council decided not to give any further consideration to the Area Structure Plan.

On April 13, 1981, a Groveco representative met with representatives of the residents and organized them into a group called the Grove Meadows Residents' Association. Through the discussions with the residents on the previous rezoning matter, Groveco became aware that the residents had the same concerns about neighbourhood appearance and density as the Groveco representative. They also found that the corporate goals of providing the best neighbourhoods in Spruce Grove at the lowest price in Spruce Grove coincided with the residents. By initiating discussions and comments from the representatives it became clear that both the developer and the residents were in complete agreement with the type of neighbourhood and living atmosphere that they would like, and an Area Structure Plan which would provide the lifestyle they wanted. On

April 20 they again met, reviewed the amendments, and the developer noted the comments. The comments caused further revisions which were submitted to the Town in the form of a revised draft Area Structure Plan. First reading of the bylaw was given on May 5 and a public hearing was scheduled for May 25.

On May 12, the developer met with the Association and was given an approval in principle. At the public hearing two weeks later the Association made representation to Council in support of the Area Structure Plan.

Council, still in disagreement with Groveco on the profit-sharing/levy issues, gave second reading only to the Plan. One month later the Plan came up for third reading but it was tabled. On July 13, representatives of Groveco met with the Town Council with a proposal to resolve the profit-sharing/levy issues. Two weeks later they met with Council again and due to the effective use of the Town's regulatory leverage reached an agreement on the profit-sharing and levy issues. The amended Area Structure Plan was given third and final reading that evening.

Figure 14 illustrates the Area Structure Plan zoning process.

5.2.5 The Phase II Plan of Subdivision. The Phase II Plan of Subdivision, known as the Lakeside Subdivision, was developed in conjunction with the Area Structure Plan and a Neighbourhood Structure Plan. All three concepts were explained and discussed with the Grove Meadows Residents Association firstly on April 13 and secondly on April 20, 1981. The initial comments they made to the plans were incorporated in the April 20 concepts. On May 12, Groveco had revised it

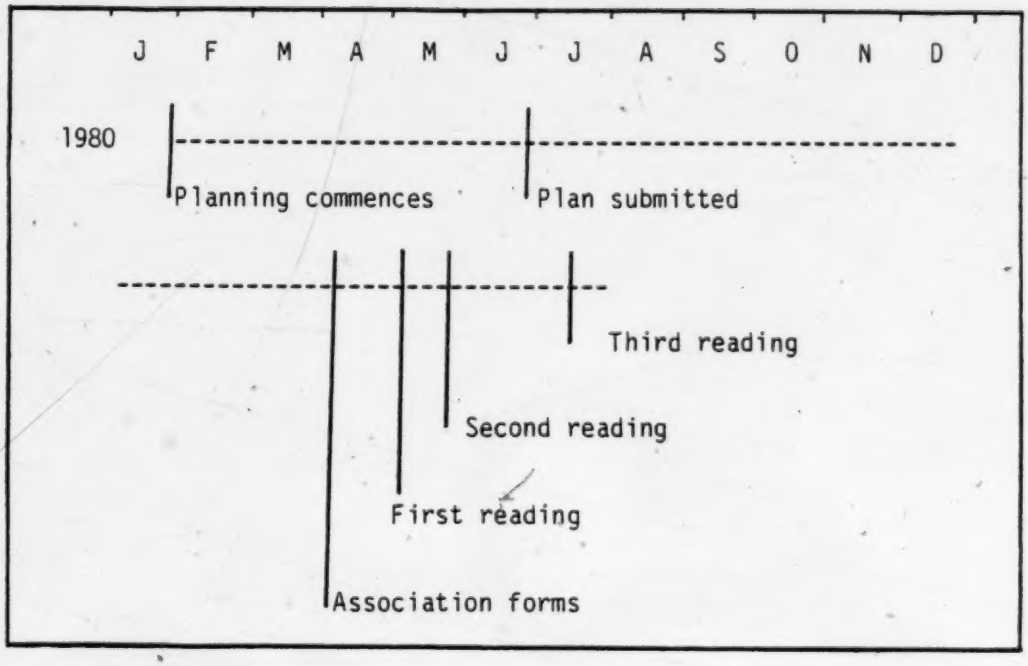

Figure 14

The Area Structure Plan Zoning Process

a second time in response to the the Association and received approval from the Association subject to some further changes.

These changes were made and the plan was submitted to the Town Council along with another Plan of Subdivision which would allow Groveco to transfer the sixty acre park site to the Town in conformance with the 1977 Agreement. The Town made further changes and on August 24 the revised plan went to Council for first reading. On September 1, both plans received second reading. Two weeks later a public hearing was held and representatives from Groveco, the Spruce Grove Community Church, and the Grove Meadows Residents' Association all indicated support for the plan.[2] The Plan was given zoning and subdivision approval by the Town Council on Ocotber 13, 1978.

5.3 Summary and Conclusions

The Groveco Developments Limited/Town of Spruce Grove relationship is unique in the Edmonton Metropolitan Region. In essence the land developer (Groveco) entered into a written agreement with the regulator (Town of Spruce Grove) in 1977. The Agreement covered approximately 534 acres of land wherein Groveco agreed to give the Town a neighbourhood developed to Town standards, normal road, park and school land dedications totalling approximately thirty-five percent of the land, a further eleven percent (sixty acres) for a park, and twenty-five percent

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2. Of special note is the fact that one of the original representatives of the residents in the Nu-West Subdivision, a Mr. David Hinch, was one of the first representatives of the Association and its ultimate Vice President. Mr. Hinch subsequently ran for Town Council in a by-election and won the seat.

of the profits. The Town, having a vested interest in the lands, agreed to support the annexation and development of the Groveco lands.

The election of a new Council prior to the Annexation Hearing meant that Groveco had to deal with a Council which had not participated in the Agreement. This new Council analysed the Agreement and agreed that it was fair and as a result, supported the annexation. In a show of support by the Provincial Government the annexation process which normally takes up to three years took only fifteen days and the effective date of the annexation was backdated to allow development to proceed.

CONCLUSION ONE: ALL LEVELS OF REGULATORY BODIES WILL MODIFY THE REGULATION PROCESS TO ALLOW RAPID DEVELOPMENT OF LANDS WHICH DEMONSTRATE THE HIGHEST PUBLIC BENEFIT FROM THEIR DEVELOPMENT.

The Phase I Plan of Subdivision was approved even though the Town of Spruce Grove was starting to prepare its General Municipal Plan and was refusing other land use plans prior to the adoption of the General Plan. In addition, it was approved even though there was no Area Structure Plan approved. The reasons the Town gave for the Phase I approval were: (a) to promote competition amongst the two developers, and (b) to not unduly delay development. Relationships between Groveco and the Town were good and approvals were given rapidly by all regulatory bodies.

CONCLUSION TWO: LAND-USE REGULATORS WILL TEND TO MODIFY THE REGULATION PROCESS TO ALLOW DEVELOPMENT SOONER IF IT WILL PROMOTE COMPETITION AMONGST DEVELOPERS.

The negotiations over the Development Agreement for Phase I between the Town and Groveco were extended. The insistence by the Town that levies not included in the original agreement be included in the

development agreement was resisted by Groveco. When Groveco agreed to these new increased levies the Town executed the development agreement.

CONCLUSION THREE: LAND-USE REGULATORS WILL SEEK INCREASED CONCESSIONS FROM DEVELOPERS IN EXCHANGE A SHORTER REGULATION PROCESS.

The Somerset Subdivision indicates that the regulation process can be modified by the regulator to facilitate the development of lands which the developer and the regulator wish to see developed. The Somerset subdivision process however had no public input which could be used to measure the influence of third parties.

The Nu-West Subdivision provided a good insight into the effect of public participation on the regulation process. In this case both the developer and the regulator had agreed to the development, however the introduction of public participation allowed the public input, which was different from that of the Town and the developer, to be incorporated which necessitated changes to the plan and extended the regulation process.

CONCLUSION FOUR: THE LAND-USE REGULATION PROCESS IS SUCH THAT THE WISHES OF THE REGULATOR AS TO LAND USE CAN OVER-RIDE THOSE OF THE DEVELOPER, AND FURTHER, THE PUBLIC WISHES CAN INFLUENCE THOSE OF THE REGULATOR IN REGARDS TO LAND-USE.

The Groveco Re-subdivision of some lots from Phase I provided further evidence of the influence of public pressure on the regulator. It also shows that incorporating public input can delay the regulation process if it is introduced late in the process and that no further delay is encountered if the concerns (input) are incorporated in full or with an agreed compromise.

The Area Structure plan regulation process demonstrated that when the public sector input is obtained early in the process, the implementation of the input into the plan will not delay the process. In fact, the developer felt that the process was perhaps slightly shortened due to the perceived public pressure on the Town of adopt the Plan.

CONCLUSION FIVE: INPUT FROM THE PUBLIC SECTOR, WHEN INCORPORATED INTO THE LAND USE PROPOSAL AT AN EARLY STAGE OF THE REGULATION PROCESS, DOES NOT DELAY THE PROCESS.

The delay of the Area Structure Plan was desired by the Town to apply pressure on Groveco to modify its position on the matter of the profit-sharing/levy issues. The delay was accomplished by introducing a number of regulatory steps and amendments to the process and the plan. The statement to the press by the Mayor confirms this approach. Once the profit-sharing/levy issues were settled the Plan was immediately accepted and given final reading.

CONCLUSION SIX: LAND-USE REGULATORS WILL MODIFY THE REGULATION PROCESS IN SUCH A MANNER THAT NEGOTIATED CONCESSIONS FROM THE DEVELOPER WILL TEND TO SPEED UP THE PROCESS.

CONCLUSION SEVEN: IN RESPONSE TO UNSATISFACTORY NEGOTIATIONS WITH A DEVELOPER, THE LAND-USE REGULATOR WILL TEND TO SLOW DOWN OR HALT THE REGULATION PROCESS.

The sixth conclusion should be qualified somewhat because it is unclear at this point if any concessions were obtained. The interpretation of the profit-sharing portion of the agreement is still unresolved. The levy issue however, was resolved in favor of the Town.

The Phase II Plan of Subdivision provides further evidence that public input need not delay the process. Since it was held up and approved in conjunction with the Area Structure Plan it also provides further evidence in support of conclusions six and seven.

It should be noted that these conclusions arise from the case study of one particular firm. The overall validity of these conclusions in all similar circumstances remains to be proven.

CHAPTER 6

IMPLICATIONS FOR LAND USE REGULATION IN ALBERTA

In response to an agreement between a developer and a land-use regulator which provides extensive concessions to the regulator, the land-use regulation process will be modified by the regulating bodies to provide concessions to the developer. These concessions tend to be in the area of more rapid approvals of land use plans which allow development of the land to occur faster than normal.

This study has also shown that the same regulators will seek increased concessions from the developer with every new plan of subdivision. If the developer resists giving more concessions it was shown that the regulator will tend to halt the regulation process.

It was also shown that if a dispute arises over the interpretation of the agreement which provided the exceptional benefits to the regulator, the regulation process will be halted until a compromise is reached or the dispute is resolved.

The implications of these findings and conclusions are clear - in the short-run developers can give concessions to land-use regulators in exchange for a shorter regulation process. This will allow the developer to get his land on-stream sooner thereby lowering his costs. If he sells his lots at market-value his profits will be increased by not having interest costs as high as if his development were delayed. Provided that

the concessions cost less than the savings in the interest costs, his profits would increase. In the Groveco Project, the Town of Spruce Grove would get twenty-five percent of these increased profits.

The problem with the Groveco Project is the fact that the concessions given in the first place, namely sixty acres of land and twenty-five percent of the profit, were quite costly. Groveco's understanding at the time was that no further concessions would be demanded. In fact an entire series of concessions was demanded and will in all likelihood continue to be demanded.

Although no financial details are provided in this study, it is safe to assume that the process of granting concessions can only continue to the point where the rate of return on the investment equals that of an investment without the high risk of land development.

Based on the findings of this study, it is clear that the granting of wholesale concessions (as in the Groveco Project) serves no useful purpose in the long-run. In light of this it is recommended that such concessions not be given by developers in expectation of favorable treatment in the regulation process in the long-run. The best course that a land developer could follow in the long-run is one where concessions are given on a small-scale with each plan of subdivision.

It is also recommended that further studies be conducted in this field. If a long-term agreement between a regulator and a developer was entered into in which all development conditions were firmly fixed then these conclusions could be tested over the long-run. Further studies which included financial data could determine the advantages or disadvantages of such agreements in the short and the long term.

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